



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

March 12, 2001

MEMORANDUM TO: Glenda Jackson
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: REVIEW OF THE PROPOSED FY 2001 FEE RULE

The Rules and Directives Branch has reviewed the proposed rule that would establish the licensing, inspection, and annual fees charged to its applicants and licensees. We have attached a marked copy of the package that presents our comments.

If you have any questions concerning this matter, please contact me at 415-7163 (MTL) or Victoria N. Voytko 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 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 Document 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 171 may also be examined during the 30-day

comment period at the NRC Public Document Room, Room O-1F22, One White Flint North,
11555 Rockville Pike, Rockville, MD 20852-2738.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial
Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone 301-
415-6057.

SUPPLEMENTARY INFORMATION:

- / I. Background.
 - / II. Proposed Action.
 - / III. Plain Language.
 - / IV. Voluntary Consensus Standards.
 - / V. Environmental Impact: Categorical Exclusion.
 - / VI. Paperwork Reduction Act Statement.
 - / VII. Regulatory Analysis.
 - / VIII. Regulatory Flexibility Analysis.
 - / IX. Backfit Analysis.
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I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover
approximately 100 percent of its budget authority, less the amount appropriated from the U.S.
Department of Energy (DOE) administered ^{✓ Nuclear Waste Fund} (NWF), by assessing fees. ^{The NRC raised} To address [✓] fairness and

equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee. ^{To address these concerns,} the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount from 100 percent to 98 percent of the NRC's budget authority in FY 2001. The OBRA-90 amendment further decreases the fee recovery amount by an additional two percent per year beginning in FY 2002, until the fee recovery amount is 90 percent by FY 2005. In addition to the 2 percent reduction to the fee recovery amount, 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.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its

Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 2001, the NRC's total budget authority is \$487.4 million, of which \$21.6 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. The NRC's FY 2001 Appropriations Act states that this \$3.2 million appropriation shall be excluded from license fee revenues. Based on the 98 percent fee recovery requirement, the NRC must collect approximately \$453.3 million in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts. The total amount to be recovered for FY 2001 is \$6.3 million more than the amount estimated for recovery in the NRC's FY 2000 fee rule. However, the amount to be recovered in fees for FY 2001 is reduced by a \$3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published. Therefore, as shown in Table 1 below, the total amount to be recovered in Part 170 and 171 fees for FY 2001 is \$450.2^{million}, which is \$3.2 million more than the total amount estimated for recovery in the NRC's FY 2000 fee rule. ✓

The NRC estimates that approximately \$112.1 million will be recovered in FY 2001 from Part 170 fees and other offsetting receipts. The remaining \$338.1 million would be recovered through the Part 171 annual fees, compared to \$341.0 million for FY 2000.

The NRC also estimates a net adjustment for FY 2001 of approximately \$0.45^{million} for payments received in FY 2001 for FY 2000 invoices. Table I summarizes the budget and fee recovery amounts for FY 2001. ✓

TABLE I - Budget and Fee Recovery Amounts for FY 2001

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 during the anniversary month of the license and continue to pay annual fees at the FY 2000 rate in FY 2001. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule would be billed at the FY 2001 revised rates 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 to mail the proposed fee rules to all licensees. However, the NRC announced in FY 1998 that, as a cost-saving measure, it planned to discontinue mailing the final rule to all licensees. Accordingly, the NRC does not plan to mail the FY 2001 final rule, or future final rules, to all 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. ✓

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

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. ✓

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the 10 CFR Part 170 fees based on the revised hourly rates and the results of the biennial review of fees required by the NRC's Chief Financial Officer (CFO) Act. Additionally, the NRC is proposing to eliminate the current fees assessed to Agreement State licensees who file revisions to their initial requests for reciprocity in states under NRC jurisdiction, and to include the costs for these revisions in the application fees assessed to reciprocity applicants. The NRC is also proposing to establish a registration fee of \$450 for Part 31 general licensees required to register certain types of generally licensed devices.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in §170.20. These proposed rates would be based on the number of FY 2001 direct program full time equivalents (FTEs) and the FY 2001 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The proposed hourly rate for the reactor program is \$150 per hour (\$266,997 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under §170.21 of the fee regulations. The proposed hourly rate for the nuclear materials and nuclear waste program is \$144 per hour (\$255,562 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under §170.31 of the fee regulations. In the FY 2000 final fee rule, the reactor and materials program rates were \$144

and \$143, respectively. The proposed increases are primarily due to the Government-wide pay increase in FY 2001.

The method used to determine the two professional hourly rates is as follows:

- a. Direct program FTE levels are identified for the reactor program and the nuclear material and waste program.
- b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.
- c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, ^{for} ₁ and the Office of the Inspector General [✓] ₃ are allocated to each program based on that _✓ program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II - FY 2001 Budget Authority to be Included in Hourly Rates

Reactor	Materials
<u>Program</u>	<u>Program</u>

Direct Program Salaries & Benefits	\$107.8M	\$31.3M	
Overhead Salaries & Benefits,	9 \$ 56.1M	9 \$15.0M	✓
Program Travel and Other Support			
Allocated Agency Management and Support	9 <u>\$100.8M</u>	9 <u>\$28.5M</u>	✓
Subtotal	\$264.7M	\$74.8M	
Less offsetting receipts	0 <u>-1.1M</u>	<u>-----</u>	✓
Total Budget Included in Hourly Rate	\$264.6M	\$74.8M	
Program Direct FTEs	991.0	292.7	
Rate per Direct FTE	\$266,997	\$255,562	
Professional Hourly Rate (Rate per direct	\$150	\$144	
FTE divided by 1,776 hours)			

As shown in Table II, dividing the \$264.6 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (991.0) results in a rate for the reactor program of \$266,997 per FTE for FY 2001. The Direct FTE Hourly Rate for the reactor program would be \$150 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$266,997) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Similarly, dividing the \$74.8 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct 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 to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions were 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. 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.

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 export and import new license applications and

export and import license

amendments remained the same for six fee categories in §§170.21 and 170.31, and decreased for four other fee categories. ✓

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 §170.31. 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. ✓

The amounts of the materials licensing "flat" fees were rounded such that they would be *de minimis* and the resulting flat fee would be convenient to the user. 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. Fees that are greater than \$100,000 are rounded to the nearest \$1,000. ✓

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 activities in the Part 171 annual fees. Materials user licensees affected by these changes have responded favorably to the elimination of multiple types of individual fees. ✓

The NRC is proposing a similar action for certain submittals from Agreement State licensees operating in areas under NRC jurisdiction under the Part 150 reciprocity provisions. Currently, a Part 170 fee of \$1,200 is charged for each initial application for NRC approval to conduct the reciprocity activities, and an additional fee of \$200 is charged for each revision to the initial application. The licensees submit revisions because they have difficulty predicting locations of the reciprocal job sites when they file their initial applications. In FY 2000, only \$23,000 was collected for 115 revisions.

The NRC is proposing to eliminate the revision fees and include the costs for processing them in the fee assessed for each initial reciprocity application. Under this proposal, the reciprocity applicants would no longer be required to submit payments with their revision requests, and the NRC's administrative burdens of processing the revisions for fee collection purposes would be eliminated. This proposed change would result in an increase in the application fee, from \$1,200 to \$1,400. The costs of the reciprocity program would still be recovered from those receiving the benefit of the NRC's reciprocity activities. It is the NRC's belief that the nominal increase to the application fee, and any potential inequities that might result because not all reciprocity licensees file revisions during the year, are outweighed by the efficiencies to be gained by both the reciprocity applicants and the NRC by streamlining the process.

4. Fees for General License Registrations

The NRC published a proposed rule in the Federal Register on July 26, 1999 (64 FR 40295) stating its intent to amend current regulations governing the use of byproduct material in

certain measuring, gauging, or controlling devices. The proposed amendments included adding explicit requirements for initiating a registration process under 10 CFR 31.5 for certain generally ^{licensed} ~~licenced~~ devices; establishing a registration fee; modifying reporting, record-keeping, and labeling requirements; and clarifying which provisions of the regulations apply to all general licenses for byproduct material. The NRC stated in the proposed rule that the registration fee would recover the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, processing and reviewing the registrations, and for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, would be exempt from the fee under §170.11. Costs not recovered from this small segment of the general licensees registering devices would continue to be recovered from annual fees paid by current holders of specific licenses. The NRC also stated in the proposed rule that the requirement for the registration fee will be effective after the initial registration requests are sent for response under §31.5(c). In this manner, the first round of registrations will be complete ^{before} ~~prior to~~ the effective date of the registration fee. ✓
Spelling

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 ^{to / e that} ~~requiring~~ certain general licensees ~~to~~ [✓] register their generally licensed devices each year with the NRC and pay the appropriate registration fee. Therein the NRC stated that the final fee, estimated at approximately \$440 to \$450, would be established in the FY 2001 fee rulemaking based on that year's budgeted costs for the program, the new FTE rate, and the estimated number of general licensees required to register.

The NRC currently estimates that approximately 4300 general licensees will be required to register their generally licensed devices. Based on the estimated number of registrants, current resource estimates, and the FY 2001 FTE rate, the proposed registration fee is \$450. This registration fee would be imposed with the first re-registration for all devices currently in use. Because this is a "flat" fee based on average cost, it will be reviewed biennially as required by the CFO Act. The registration fee established in the FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

5. Fee Waivers

In the recent past, several requests for Part 170 fee exemptions have been filed by licensees and other organizations who submit topical reports and other requests to the NRC for review. Part 170 currently provides that fees will not be assessed for requests or reports submitted to the NRC in response to an NRC inquiry 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 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, the basis for several fee waiver requests was predicated 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) 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. *criteria* *criteria* ✓
In addition, *criteria* ~~1., 2., and 3.~~ of Footnote 4 to §170.21 would be redesignated as criterion (a), (b), and (c).

In summary, the NRC is proposing to amend 10 CFR Part 170 to *✓* *✓*

- P* 1. *✓* Revise the material and reactor program FTE hourly rates;
- P* 2. *✓* Revise the licensing fees to be assessed to reflect the revised hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;
- P* 3. *✓* Eliminate fees for Agreement State licensees who submit revisions to their initial requests for reciprocity in States under NRC jurisdiction, and incorporate these costs into the initial reciprocity application fee;

- P 4. ✓ Establish registration fees to be assessed to licensees who are required to register their generally licensed devices, beginning after the first round of registrations is completed; and

- P 5. ✓ Clarify that the fee waiver provisions of the current criterion 3 of Footnote 4 to §170.21 ✓
and criterion (c) of Footnote 5 to §170.31 apply only to requests/reports that support
NRC's generic regulatory improvements or efforts, and redesignate ^{criteria ✓} criterion 1., 2., and 3.,
of Footnote 4 to §170.21 as ^{criteria ✓} criterion (a), (b), and (c). ✓

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC ✓

The NRC proposes to revise the annual fees for FY 2001 and revise the current process for providing NRC Form 526 to licensees for purposes of certifying that they qualify as a small entity. The proposed amendments are as follows: ✓

1. Annual Fees ✓

The NRC is proposing to establish new rebaselined 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.

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. *Rebaselining* 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 be recovered through annual fees for FY 2001 is \$338.1 million, compared to \$341.0 million for FY 2000.

The proposed FY 2001 annual fees would increase for some categories of licensees and decrease for others from the previous year. The decreases in annual fees range from approximately 0.4 percent for operating power reactor licensees (including the spent fuel storage/reactor decommissioning annual fee), to 29.0 percent for uranium recovery licensees, and 42 percent DOE ^{for Uranium Mill Tailings Radiation Control Act} (UMTRCA) activities. The increases in annual fees range from approximately

2.5 percent for materials licenses authorizing distribution of radiopharmaceuticals, to approximately 165.0 percent for transportation users.

(1/15/01) ✓
Factors affecting the changes to the annual fee amounts include changes in budgeted costs affecting the classes of licensees, the reduction in the fee recovery rate from 100 percent for FY 2000 to 98 percent for FY 2001, the estimated Part 170 collections for the various classes of licensees, the increased hourly rates, decreases in the numbers of licensees for certain categories of licenses, and for the materials user class, the results of the biennial review of Part 170 fees required by the CFO Act. The biennial review shows that the average number of professional hours to conduct inspections and to review new license applications for material licenses increased for some fee categories, decreased for others, or remained the same. The average time to conduct inspections and to review new license applications for the materials user license fee categories ^{and then are} are used to allocate the materials budget for rebaselining the annual fees ^{of} because they serve as accurate measures to reflect the complexity of the licensing. Increases in the average professional time for inspections and reviews of new license applications result in higher annual fees for the affected fee categories, assuming all else remains the same (e.g., no loss of licensees). ✓

The increase for the transportation users, who would have the largest percentage increase, is due primarily to the budgeted costs for the enhanced participatory Part 71 rulemaking ^{and} and the Office of Nuclear Material Safety and Safeguards' risk study activities. In addition, there has been a shift in the distribution of the budgeted costs associated with quality assurance reviews and Part 71 vendor inspections. The budgeted costs for these activities are 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.

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*

<u>CLASS OF LICENSEES</u>	PROPOSED FY 2001
<u>ANNUAL FEE</u>	
Power Reactors (including Spent Fuel Storage/ Reactor Decommissioning annual fee)	\$2,805,000
Spent Fuel Storage/Reactor Decommission	275,000
Nonpower Reactors	73,900
High Enriched Uranium Fuel Facility	3,546,000
Low Enriched Uranium Fuel Facility	1,189,000
UF ₆ Conversion Facility	510,000
Uranium Mills	94,000
<u>Transportation</u>	
Users/Fabricators	62,400
Users Only	6,100
<u>Typical Materials Users</u>	
Radiographers	12,500
Well Loggers	8,800

Gauge Users

2,400

Broad Scope Medical

24,200

P The annual fees assessed to each class of licensees includes a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees, but must be recovered from licensees to comply with the requirements of OBRA-90, as amended. ^{Y^t} The total surcharge costs ^{will} be reduced by about \$9.3 million ^{of} based on the amendment to OBRA-90 that reduced the NRC's fee recovery requirement by 2 percent for FY 2001, from 100 percent to 98 percent of the NRC's budget authority. The total FY 2001 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table IV. All dollar amounts in the Table are rounded.

TABLE IV - SURCHARGE ^{Costs ✓} / ^{title case}

<u>Category of Costs</u>	<u>FY 2001 Budgeted Costs (\$M)</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	6.0
b. Agreement State oversight	6.6
c. Low-level waste disposal generic activities	1.7
d. Site decommissioning management plan	7.3
activities not recovered under Part 170	
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based	

on existing law or Commission policy:

- | | | |
|----|--|-----|
| a. | Fee exemption for nonprofit educational institutions | 8.2 |
| b. | Licensing and inspection activities associated with other Federal agencies | 3.9 |
| c. | Costs not recovered from small entities under 10 CFR 171.16(c) | 5.6 |

3. Activities supporting NRC operating licensees and others:

- | | | |
|----|--|------|
| a. | Regulatory support to Agreement States | 14.4 |
| b. | Generic decommissioning/reclamation (except those related to power reactors) | 3.4 |

Total surcharge costs 57.1

Less 2 percent of NRC's FY 2001 total budget (minus -9.3

High-Level Waste (HLW) and General Fund amounts *NWF*

Total Surcharge Costs to be Recovered 47.9

As shown in Table IV, \$47.9 million would be the total surcharge cost allocated to the various classes of licensees for FY 2001. The NRC would continue to allocate the surcharge costs, except *Low-Level Waste* (LLW) surcharge costs, to each class of licensee based on the percent of budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licensees. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2001 proposed surcharge costs that would be allocated to each class of licensees are shown in

Table V.

TABLE V - ~~ALLOCATION OF SURCHARGE~~ Title Case

	LLW Surcharge		Non-LLW Surcharge		Total Surcharge
	<u>Percent</u>	<u>\$,M</u>	<u>Percent</u>	<u>\$,M</u>	<u>\$,M</u>
Operating Power	74	1.3	79.1	36.5	37.8
Reactors					
Spent Fuel Storage/	---	---	9.2	4.3	4.3
Reactor Decomm.					
Nonpower Reactors	---	---	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.3	2.5	2.6
Materials Users	18	0.3	3.9	1.8	2.1
Transportation	---	---	1.2	0.5	0.5
Rare Earth Facilities	---	---	0.2	0.1	0.1
Uranium Recovery	---	---	1.0	<u>0.4</u>	<u>0.4</u>
TOTAL SURCHARGE		1.7		46.2	47.9

The budgeted costs allocated to each class of licensees and the calculations of the rebaselined fees are described in A through H below. The workpapers which support this proposed rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at website address <http://www.gov/NRC/ADAMS/index.html>. During the 30-day public comment period, the

workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

Because the FY 2001 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2001 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2001 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the FY 2001 final rule would be billed during the anniversary month of the license, and continue to pay annual fees at the FY 2000 rate in FY 2001. However, those material licensees whose license anniversary date falls on or after the effective date of the FY 2001 final rule would be billed at the FY 2001 rates 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 is amenable to 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/^{the licensee} certificate in such a way that it resulted in ~~them~~^{the licensee} not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among the remaining licensees/certificate holders,^{and} resulting in a higher fee for those remaining in that fee category. ✓

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth, and rigor). ✓

The effort factors for the various subclasses of fuel facility licensees and the resulting proposed annual fees for FY 2001 are ~~as follows:~~ ^{summarized in the table below.}

TABLE VI — Effort Factors for Fuel Facilities

<u>Facility type</u>	No. of <u>Facilities</u>	<u>Effort Factors</u>	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium	2	91 (33.1%)	6 (54.7%)
Fuel			
Enrichment	2	70 (25.5%)	34 (24.5%)
Low Enriched Uranium	4	88 (32.0%)	24 (17.3%)
Fuel			
UF ₆ Conversion	1	8 (2.9%)	3 (2.2%)
Limited Operations	1	12 (4.4%)	0 (0%)
Facility			
Others	1	6 (2.2%)	2 (1.4%)

Applying these factors to the safety, safeguards, and surcharge components of the \$17.6 million total annual fee amount for the fuel facility class results in the following proposed annual fees for each licensee within the subcategories of this class. ^g - summarized in the table below.

TABLE VII — Proposed Annual Fees for Fuel Facilities

<u>Facility type</u>	<u>Proposed FY 2001 Annual Fee</u>
High Enriched Uranium Fuel	\$3,546,000
Uranium Enrichment	2,208,000
Low Enriched Uranium	1,189,000

all inc

UF ₆ Conversion	510,000
Limited Operations Facility	467,000
Others	340,000

^b
~~B.~~ Uranium Recovery Facilities

The FY 2001 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately \$1.5 million. Of this amount, approximately \$652,000 would be assessed to DOE to recover the costs associated with DOE sites under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining \$861,000 would be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The costs are allocated to the individual uranium recovery licensees in these categories based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999).

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed, and ~~consists of the following:~~ *is as follows.*

(1) The methodology identifies three categories of licensees: conventional uranium mills (Class I facilities), solution mining uranium mills (Class II facilities), and mill tailings disposal facilities (11e(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents, etc.);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications, and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of uranium recovery licensees are as follows:

TABLE VIII — Weighted Factors for Uranium Recovery Licensees

Facility Type	Number of Facilities	Level of Benefit		
		Category	Total Weight	
		Weight	Value	Percent

Class I (conventional mills)	3	770	2310	33
Class II (in-situ mills)	6.5'	645	4193	59
11e(2) disposal	1	475	475	7
11e(2) disposal incident to existing tailings sites)	1	75	75	1

^{percent}
 The FY 2001 annual fee would be prorated 50% for Cogema Mining's License SUA-1341 based on its November 10, 2000, request that the license be amended for possession only. ✓

Applying these factors to the \$861,000 in 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

Because the proposed FY 2001 annual fees for the uranium recovery class, with the exception of the annual fee for DOE UMTRCA site program, would drop below the \$100,000 threshold established for quarterly billing, uranium recovery licensees would become subject to billing of the full amount of the annual fee based on the anniversary date of their license. Some of these licensees were billed on a quarterly basis during FY 2001 based on the FY 2000 annual fee ✓

amounts. In cases where these quarterly billings have resulted in payments in excess of the final FY 2001 annual fee amounts, refunds would be issued after the final FY 2001 fee rule is issued.

(11c) 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 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 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 E. Non-power Reactors

Approximately \$300,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licensees for FY 2001. This amount would be

divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2001 annual fee of \$74,000 for each licensee.

^f
F. Rare Earth Facilities.

✓

The FY 2001 budgeted costs of approximately \$89,000 for rare earth facilities to be recovered through annual fees would be divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is a proposed FY 2001 annual fee of \$29,600 for each rare earth facility.

^g
G. Materials Users.

✓

To equitably and fairly allocate the \$23.1 million in FY 2001 budgeted costs to be recovered in annual fees assessed to the approximately 5000 diverse materials users and registrants, the NRC has continued to use the methodology ^d used in FY 1999 ^g to establish baseline annual fees for this class. The annual fees are based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows.

✓ ✓

Annual fee = Constant x [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier x (average inspection costs/inspection priority) + Unique Category Costs.

if these two phrase denote the same thing the same expression should be used in both instances

The constant is the multiple necessary to recover approximately \$15.1 million in general costs and is ^{0.96} for FY 2001. The inspection multiplier is the multiple necessary to recover approximately 5.7 million in inspection costs for FY 2001, and is 1.2 for FY 2001. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 2001, unique costs of approximately \$143,000 were identified for the medical development program ^{an amount} which is attributable to medical licensees. ✓

The annual fee assessed to each licensee also includes a share of the \$1.8 million in surcharge costs allocated to the materials user class of licensees, and, for certain categories of these licenses, a share of the approximately \$300,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in §171.16(d).

^{h.}
H. Transportation ✓

Of the approximately \$3.9 million in FY 2001 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately \$1.1 million would be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance that it holds. Of the remaining \$2.8 million, approximately 26 percent would be allocated to holders of approved quality assurance plans authorizing "use only." This results in a proposed annual fee of \$6,100 for each of the 119 holders of "use only" quality assurance plans.

Approximately 74 percent would be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use, resulting in a proposed annual fee of \$62,400 for each of the 36 holders of these quality assurance plans.

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. For the first time since they were introduced in FY 1991 and FY 1992, the NRC revised the small entity fees in FY 2000 based on changes that had occurred in the fee structure for materials licensees over time and the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established. 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 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.

Because the annual fees for materials users now include the cost of amendments, renewals, and inspections, in the future the NRC plans to re-examine small entity fees as part of its biennial review of fees required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule.

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> ^{and submit the form only} if they qualify as a "small entity" under the NRC size standards requirements at 10 CFR Part 2.810. 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 ~~Section~~ [§] 171.16(c)(2) to eliminate the mailing of NRC Form 526 with the annual fee invoice to individual materials licensees; ^{and} ✓
3. Re-examine the small entity fees in the future as part of the biennial review of fees required by the CFO's Act. ✓

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the ADDRESSES heading.

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 ^{is} or otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 98 percent of its budget authority in FY 2001 as is required by the

Omnibus Budget Reconciliation Act of 1990, as amended. 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 proposed 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 proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised. ✓

VI. Paperwork Reduction Act Statement

This proposed rule contains no 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

With respect to 10 CFR Part 170, this proposed 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 by the U.S. Supreme Court on March 4, 1974, 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 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). This court held that- ✓

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery⁹ amount from 100 percent to 98 percent of the NRC's budget authority for FY 2001. To comply with this statutory requirement, and in accordance with §171.13, the NRC is publishing the proposed amount of the FY 2001 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provides that⁹ ✓

(1) The annual fees be based on approximately 98 percent of the Commission's FY 2001 budget of \$481.9 million less the amounts collected from Part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

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.

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear ✓ ✓ caps materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.

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

1. The authority citation for Part 170 ~~continues~~^{is} 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).

*****

2. Section 170.2 is amended by adding a paragraph (s) to read as follows:

§170.2 Scope.

(s) A holder of a general license granted by 10 CFR Part 31 who is required to register a device(s).

3. Section 170.3 is amended by revising the following definitions of *Materials License* and *Special Projects*:

§170.3 Definitions.

Materials License means a license, certificate, approval, registration, or other form of permission issued or granted by the NRC pursuant to the regulations in 10 CFR Parts 30, 31 through 36, 39, 40, 61, 70, 72, and 76.

Special Projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, 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. As used in this part, special projects does not include requests/reports submitted to the NRC. *that* ✓ ✓

(1) In response to a Generic Letter or NRC Bulletin *which* ^{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. ✓ ✓

4. 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 prior to receiving the prescribed application fee. The application or registration fee(s) is

(before) ✓

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.

5. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program	\$150 per hour
(§170.21 Activities)	

Nuclear Materials and	\$144 per hour
Nuclear Waste Program	
(§170.31 Activities)	

*****

✓

6. In §170.21, the introductory text, Category K, and footnotes 1, 2, ³ and and 4 to the table are 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/}

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.

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.

⁴ Fees will not be assessed for requests/reports submitted to the NRC: —



(a) In response to a Generic Letter or NRC Bulleting 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;

(b) 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} NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulleting; or

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

Full cost fees will Full cost fees will

7. Section 170.31 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. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Application \$1300

- E. Licenses or certificates for construction and operation of a uranium enrichment facility.

Licensing and inspection Full Cost

2. Source material:

A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ^{and} ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:



Licensing and inspection Full Cost

- (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A⁹(1).



Licensing and inspection Full Cost

- (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category ~~2.A~~⁰(1).

Licensing and inspection Full Cost

- B. Licenses which authorize the possession, use, and/or installation of source material for shielding:

Application \$160

- C. All other source material licenses:

Application \$5,700

3. Byproduct material:

- A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application \$6,700

- B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application\$1,300

- Q. Registration of a device(s) generally licensed pursuant *(under)* to Part 31:

Application \$450

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:

Licensing and inspection Full Cost

- 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 the material. The licensee will dispose of the material by transfer to another

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application \$330

9. Device, product, or sealed source safety evaluation:

- A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

~~11~~ ~~11~~ ✓
Application-each device \$5,400 ✓

- B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:

Application - each device \$5,400

- C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application - each source \$1,600

- D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in

- 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

⁵ Fees will not be assessed for requests/reports submitted to the NRC:

(a) 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 re-analysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) 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 ✓

(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. ✓

8. Section 170.41 is revised to read as follows:

§170.41 ⁹ Failure by applicant or licensee to pay prescribed fees. ✓

~~In any case where~~ ^{It} the Commission ~~finds~~ ^{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} or may issue an order with respect to licensed activities ^{that} as the Commission determines ~~to be~~ appropriate or necessary ~~in order~~ 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.

9. 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).

10. In Section §171.5, the definition of *Materials License* is revised to read as follows:

§171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued or granted by the NRC pursuant to the regulations in 10 CFR Parts 30, 31 through 36, 39, 40, 61, 70, 71, 72, and 76.

under

11. In §171.15, paragraphs (b), (c), (d), and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning.

* * * * *

(b)(1) The FY 2001 annual fee for each operating power reactor which must be collected by September 30, 2001, is \$2,805,000.

(2) The FY 2001 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2001 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2001 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site ^{for} and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$275,000. ✓

(2) The FY 2001 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 spent fuel storage/reactor decommissioning rebaselined annual fee are ✓-

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2001 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licensees (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

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

(2) The total FY 2001 surcharge allocated to the operating power reactor class of licensees is \$37.8 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2001 operating power reactor surcharge to be assessed to each operating power reactor is approximately \$363,500. This amount is calculated by dividing the total operating power reactor surcharge (\$37.8 million) by the number of operating power reactors (104).

✓
(3) The FY 2001 surcharge allocated to the spent fuel storage/reactor decommissioning ✓
class of licensees is \$4.3 million. The FY 2001 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is approximately \$35,500. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and Part 72 licensees who do not hold a Part 50 license.

(e) The FY 2001 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor	\$73,900
Test reactor	\$73,900



12. In §171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

evaluation of sealed sources containing
byproduct material, source material,
or special nuclear material, except
reactor fuel, for commercial distribution.....\$1,700

- D. Registrations issued for the safety
evaluation of sealed sources containing
byproduct material, source material,
or special nuclear material,
manufactured in accordance with the
unique specifications of, and for use by,
a single applicant, except reactor fuel.....\$590

10. Transportation of radioactive material:

- A. Certificates of Compliance or other
package approvals issued for design of
casks, packages, and shipping
containers.

Spent Fuel, High-Level Waste, and
plutonium air packages.....N/A⁶

Other Casks.....N/A⁶

- B. Quality assurance program approvals issued
under 10 CFR Part 71.0



⁵ There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

⁶ Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

⁸ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

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) (1) ✓

¹² See 10 CFR 171.15(c) (1) ✓

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 classes 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 conducted 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). ✓

13. In Section [§]171.19, paragraphs (b) and (d) are revised to read as follows: ✓

§171.19 Payment.

(b) Annual fees in the amount of \$100,000 or more and described in the Federal Register document issued under §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 2000 was less than \$100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 2001 would be \$100,000 or greater (subject to quarterly billing), would be issued a bill upon

publication of the final rule for the full amount of the FY 2001 annual fee, less any payments received for FY 2001 based on the anniversary date billing process.

(d) Annual fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2(A)(2) Class I, 2(A)(2) Class II, 2(A)(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

* * * * *

Dated at Rockville, Maryland, this ____ day of _____, 2001.

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A TO THIS PROPOSED RULE --
DRAFT REGULATORY FLEXIBILITY ANALYSIS FOR THE
AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND
10 CFR PART 171 (ANNUAL FEES)

I. Background ✓

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 et seq.) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in §171.16(c) of this proposed rule are based on the NRC's size standards.


From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA-90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less

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 \$453.3⁰. ✓

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. *be / These charges must* ✓

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} was 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. ✓ ✓

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue the policy established in FY 1995 to adjust the annual fees by the percent change method, unless there ^{were} ~~was~~ a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished.



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.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2001 fee rule as required by law.

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.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee ✓

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six

its biennial review of fees required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule.

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. ~~that a maximum annual~~ ✓
~~OBRA-90 requirements~~ ○

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, requires the NRC to collect approximately 98 percent of its budget authority each year through fees. This rule is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees comply 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 complete 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~~ 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 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*--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 fewer 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 guidelines. ^(Regulations)

6. ~~i)~~ A small business concern is an independently owned and operated entity which is not considered ^{dominated} ~~dominate~~ in its field of operations. ✓

20. ~~ii)~~ 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} numbers ^{of} employees working for the licensee or conducting NRC licensed activities for the company). ✓

30. ~~iii)~~ 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. ~~iv)~~ 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:

Small Business Not Engaged

Maximum Annual Fee

Supported, and have 500 Employees

or Less

35 to 500 employees	\$2,300
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> if they qualify as a "small entity" under the NRC size standards requirements at 10 CFR Part 2.810. 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.

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) and 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. These are, ^e 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.