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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately \$453.3 million.

DATES: The comment period expires (Insert date 30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90

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, 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.

↑
what's this
Mean?

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. ^{2nd} ~~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~~ ^{further} ~~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, 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. ^{\$337.7} ~~The remaining \$338.4 million would be recovered through the Part 171 annual fees, compared to \$341.0 million for FY 2000.~~

^{\$1.4} ~~The NRC also estimates a net adjustment for FY 2001 of approximately \$1.4 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

[Dollars in Millions]

Total Budget Authority	\$487.4
Less NWF	- 21.6
Less General Fund	- <u>3.2</u>
Balance	462.6
Fee Recovery Rate for FY 2001	<u>x 98.0%</u>
Amount to be Recovered Through Fees	\$453.3
Less Estimated Part 170 Fees and other receipts	-112.1
Less Carryover from FY 2000	- <u>3.1</u>
Part 171 Fee Collections Required	\$338.1
Part 171 Billing Adjustments ¹	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	- <u>3.65</u>
Subtotal	- 0.45
Adjusted Part 171 Collections Required	\$ 337.65 7

¹These adjustments are necessary to ensure that the "billed" amount results in the required collections.

The final FY 2001 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, 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 to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. 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 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

6w
fixed
100%
?

and \$143, respectively. The proposed increases are primarily due to the Government-wide pay increase in FY 2001. *So then why + (for reactors ed +) for materials?*

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, and the Office of the Inspector General 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>

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 §171.21, 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 §171.16. 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.

need?
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.

streamline ✓

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 ^{of the} ~~they have~~ difficulty ⁱⁿ predicting locations of the reciprocal job sites when ~~they file their~~ initial applications. In FY 2000, only \$23,000 was collected for 115 revisions. *are filed*

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

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 burden 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 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 ^{year} ~~round~~ of registrations will be complete before ~~the effective date of the registration fee.~~^{s will be required.}

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 to require that certain general licensees 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.

class of licensee. To clarify the intent of the fee waiver provision, the NRC is modifying the current criterion 3. of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to specifically state that the reports must support NRC's generic regulatory improvements or efforts. In addition, criteria 1., 2., and 3. of Footnote 4 to §170.21 would be redesignated as criteria (a), (b), and (c).

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

1. Revise the material and reactor program FTE hourly rates;
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;
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;
4. Establish registration fees to be assessed to licensees who are required to register their generally licensed devices, beginning after the first ^{year} round of registrations is completed; and

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 1., 2., and 3., of Footnote 4 to §170.21 as criteria (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

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 serve as accurate measures of the complexity of the licenses and, therefore, are used to allocate the materials budget for rebaselining the annual fees. 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 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.

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. 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 surcharge costs will be reduced by about \$9.3 million. 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

<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	3.9
	associated with other Federal agencies	
c.	Costs not recovered from small entities	5.6
	under 10 CFR 171.16(c)	
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 NWF and General Fund amounts)	-9.3
	Total Surcharge Costs to be Recovered	47.9

9.252
 have -9.2?
 rounding
 47.8 ✓

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.

right words?

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/certificate in such a way that it resulted in the licensee not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among the remaining licensees/certificate holders, and result 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 are summarized in the table below.

TABLE VI - Effort Factors for Fuel Facilities

<u>Facility type</u>	Number 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%)

210%

77 100%

Rounded

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 proposed annual fees for each licensee within the subcategories of this class 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
UF ₆ Conversion	510,000

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.

lower case C. Power Reactors

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

d. Spent Fuel Storage/Reactor Decommissioning

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

e. Non-power Reactors

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.

$$\frac{300,000}{4} = \$75,000 \text{ rounding again?}$$

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. 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 FY 1999 methodology 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

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.

$$\begin{array}{r} \$2.8M \times .74 = \$2.072M \\ \hline 36 = \\ \$57,555 \end{array}$$

760 for off!

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 the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and on changes that had occurred in the fee structure for materials licensees over time. The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other materials licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them. The costs not

recovered from small entities must be recovered from other licensees. The current small entity fees of \$500 and \$2,300 provide considerable relief to many small entities.

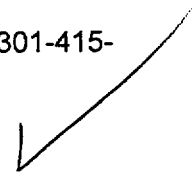
Because the annual fees for materials users now include the cost of amendments, renewals, and inspections, in the future the NRC plans to re-examine small entity fees as part of its biennial review of fees required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in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

Handwritten notes: "2000", "2001", "2002" with arrows pointing to the right.

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.

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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 to adjust the annual fees by the percent change method established in FY 1995, unless there were 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 rebase its Part 171 annual fees ^{In FY 2001.} ~~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.


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



In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2001. The revision to the small entity fees in FY 2000 was the first change to the fees since they were introduced in FY 1991 and FY 1992. The revised fees were based on 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 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



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

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