



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

May 2, 1997

PDR  
AF55-2

*Jim H.*  
*[Signature]*

NOTE TO: Jesse L. Funches  
FROM: James Turdici ✓  
SUBJECT: FINAL NOTICE OF RULEMAKING -- 10 CFR PARTS 170 AND 171  
100 PERCENT FEE RECOVERY FOR FY 1997

Attached is a copy of the subject final rule annotated with our suggested changes.  
With these changes, I concur in the final rule.

Attachment: Annotated Final Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF 55

Revision of Fee Schedules; 100% Fee Recovery, FY 1997

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1997 less amounts appropriated from the Nuclear Waste Fund (NWF). The FY 1997 NRC Appropriation also excluded from the fee base the cost of NRC review relating to the commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site. The amount to be recovered for FY 1997 is approximately \$462.3

assessed for FY 1996 were adopted by the NRC. These changes were highlighted in the final rule (61 FR 16203; April 12, 1996) and bear on the approach for establishing annual fees set forth in this final rule for FY 1997.

On February 27, 1997 (62 FR 8885), the NRC published a proposed rule to establish the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1997, less the appropriation received from the Nuclear Waste Fund and the General Fund. These changes were highlighted in the proposed rule (62 FR 8885; February 27, 1997) and have been adopted in this final rule for FY 1997. The major changes are summarized as follows:

1. ~~Stabilize~~ 10 CFR 171 annual fees ~~by adjusting all annual fees~~ upward by about 8 percent. This change is consistent with the NRC's intention stated in the FY 1995 final rule, that beginning in FY 1996, annual fees would be stabilized by adjusting prior year annual fees by the percent change (plus or minus) in the NRC budget authority taking into consideration the estimated collections from 10 CFR Part 170 fees and the number of licensees paying fees;
2. Establish and assess a new annual fee of \$2,600,000 (fee Category 1.E.) for each Certificate of Compliance issued to the United States Enrichment Corporation.

3. Revise the two professional hourly rates in §170.20 which are used to determine the 10 CFR Part 170 fees assessed by the NRC. The rate for FY 1997 for the reactor program is \$131 per hour and the rate for the materials program is \$125 per hour.
4. Adjust the current licensing and inspection fees in §§170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the review required by the Chief Financial Officers Act.
5. Implement a procedural change whereby fees will be assessed under §§170.21 and 170.31 to verify quality assurance, safeguards contingency and emergency plan changes submitted by licensees.

## II. Responses to Comments

The NRC received nine comments on the proposed rule. Although the comment period ended on March 31, 1997, the NRC has reviewed and evaluated all comments received, including those that were ~~late~~ *received after that date.*

Several of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as



appropriate, and addressed as single issues in this final rule.

The comments are as follows:

A. Comments regarding the major changes proposed in the FY 1997 fee rule.

1. Streamline and stabilize annual fees.

Comment. Commenters continue to support the positive steps taken by the NRC to equitably distribute and to reduce the burden of user fees on licensees. Two commenters representing nuclear power plants argue that the annual fees being charged to power plant licensees, and particularly the ~~8%~~<sup>percent</sup> increase in those fees proposed for 1997, are inconsistent with statutory requirements. The commenters argue in particular that section 2214(b) of Title 42 of the U.S. Code requires, without exception, that every recipient of a definite service from the NRC should pay 10 CFR Part 170 fees. The statute says that "any person who receives a service or thing of value from the Commission shall [emphasis added] pay fees to cover the Commission's costs in providing any such service or thing of value." 42 U.S.C. 2214(b). The commenters believe that the word "shall" means that the agency has no authority not to charge 10 CFR Part 170 fees to parties who receive benefits from the agency. The result, they argue, of the agency's not charging all beneficiaries is a fee system that

charges nuclear power plants for services provided to others, and thus fails to meet the statutory requirement that, "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to licensees. 42 U.S.C. 2214(c)(3). As evidence that this statutory requirement has been violated, the commenters argue that the ~~8%~~<sup>percent</sup> increase in annual fees in FY 1997 is due largely to a projected, and unexplained, reduction in 10 CFR Part 170 fees charged to persons and entities other than power reactor licensees and is thus unrelated to the costs of regulating nuclear power reactors. The commenters believe that the agency should replace the proposed rule with one that charges everyone who receives a service from the agency the cost of providing that service.

Response. The NRC readily acknowledges the commenters' concerns for fairness and equity. As the Commission has explained many times previously, to recover approximately 100 percent of its budget authority in fees, a portion of the annual fee<sup>s</sup> paid by power reactors recovers the costs of services rendered by the NRC which are not attributable to the costs of regulating nuclear power plants (cite). ?

However, the NRC believes the current fee system is as fair and equitable as the current statutory structure underlying the agency's fee system will permit. For example, the agency is

barred by law from charging all but two federal agencies 10 CFR Part 170 fees; not all the work which the NRC does for other agencies and governments can be recovered through reimbursable agreements (see 60 Fed. Reg. 32218, 32222 (June 20, 1995)), and yet that work is necessary for public health and safety and U.S. national interests; <sup>and</sup> under the Regulatory Flexibility Act, the agency is obliged to consider carefully the impact of its fee rules on small entities and to seek less onerous alternatives. ?

Such exemptions from fees as the NRC has granted are of long-standing and well-founded in law, and have been granted only after full and public consideration of the relevant policy questions. Section 2214(b) of Title 42 of the U.S. Code may say that beneficiaries of the agency's work "shall" pay fees to cover its costs, but, as a matter of jurisprudence, laws that use the word "shall" do nonetheless admit of exceptions; were this not so, the exemption provisions in the agency's safety rules, for example 10 CFR 50.12, would be invalid, since they provide for exemptions from rules that use the word "shall". More particularly, as the agency said in response to similar arguments advanced by comments on the FY 1991 rule, the agency is not required to assess fees to every beneficiary of its work. For example, OMB Circular No. A-25, which contains government-wide policy guidance for the IOAA, states, in item 5.(b).(3)., that an agency can exempt fees for recipients engaged in nonprofit activity designed for the public health, safety, and welfare.

Moreover, the statute underlying the agency's annual fees states that "any licensee of the Commission may [emphasis added] be required to pay ... an annual charge." (42 U.S.C. 2214(c)(1).) See 56 Fed. Reg. 31472, 31474 (July 10, 1991).

The ~~8%~~<sup>percent</sup> increase in annual fees for power reactors, about which the commenters are understandably concerned, was fully explained in the statement of considerations accompanying the proposed rule. See Part II, Section B and Table 1 in 62 Fed. Reg. 8885, 8887 (February 27, 1997). As the discussion there shows, the increase is nonetheless neither arbitrary ~~or~~ capricious. To recap briefly, the increase is the result of several factors: a substantial reduction in projected 10 CFR Part 170 fees, largely because ~~of~~<sup>of</sup> reductions in resources devoted to reviews of applications for standard plant reviews and reactor operating licenses; a reduction in the number of licensees paying annual fees, largely the result of one reactor ~~having~~<sup>permanently</sup> ceased operations ~~permanently~~<sup>transfer</sup> and the ~~reassignment~~<sup>transfer</sup> to Massachusetts in mid-FY1997 ~~later this year~~ of regulatory responsibility for some 425 materials licenses ~~s~~<sup>for FY1997</sup>; ~~several million dollars less in excess collections than were~~<sup>from</sup> ~~from~~ FY 1995 ~~that were available~~ to reduce FY 1996 annual fees; a small increase in the ~~amount~~<sup>total(?)</sup> ~~by which~~<sup>for the</sup> small entity fees ~~are~~<sup>reduction</sup> ~~reduced~~; and a greater allowance for unpaid bills, to help assure that the agency will meet its obligation to collect 100 percent of its budget.

While the agency believes that its current fee structure is fully justified by law and policy, the agency remains committed to working with Congress to reduce the fee burdens that power plant licensees bear because they pay for regulatory activities that do not directly benefit them. Three years ago, the agency submitted a report to Congress that recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to about 90 percent, thus eliminating the surcharge the power plant licensees, and some others, bear because some parties receive benefits for which they do not pay. In the near future, the NRC will be updating that report and reassessing the need for legislation.

This final rule adopts the methodology to streamline and stabilize FY 1997 annual fees by adjusting these fees by the percentage change (plus or minus) in NRC's total budget authority <sup>and other factors</sup>. The FY 1996 annual fees have been used as base annual fees and these annual fees have been adjusted upward for FY 1997 based on the percentage change in the NRC's budget authority, taking into consideration the total number of licensees paying fees and estimated collections from 10 CFR Part 170 licensing and inspection fees. Therefore for FY 1997, all annual fees have been adjusted about 8 percent above ~~the~~ <sup>the</sup> FY 1996 levels. ?

2. Revise the two professional rates in 10 CFR 170.20 based on the FY 1997 budget and adjust the 10 CFR 170.21 and 170.31 licensing (application and amendment) "flat" fees for licenses to

Public Document Room. The specific details regarding the budget for FY 1997 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1997" (NUREG-1100, Volume 12), which is available to the public. Copies of NUREG-1100, Volume 12, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328. <sup>all SP</sup> Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001. The NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the licensee or applicant.

b. Comment. One commenter indicated that although they appreciate NRC's efforts to stabilize fees based on percentage changes in NRC's annual budget, they have concerns about the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from such services. The commenters assert that the Commission cannot impose fees under the IOAA unless there is a rational relationship between the fees and the regulatory services provided. The commenters, citing Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985), note that in applying this IOAA requirement, the fees



assessed must be reasonably related to, and may not exceed the value of the service to the recipient whatever the agency's cost may be. The commenter then suggests that the NRC fee system may violate this principle because the proposed hourly rate of \$125 for services provided by agency professionals is unduly high. The commenter goes on to say that the problem of the lack of reasonable relationship between annual fees and services rendered is exacerbated as more states become Agreement States, e.g., Massachusetts which became an Agreement State in FY 1997, leaving fewer NRC licensees to bear an even <sup>e</sup>grater share of the burden. The commenter states that the current system, in effect, gives preferential treatment to licensees in Agreement States. The commenter also indicated that as the uranium recovery industry continues to shrink in size, the decreasing number of licensees will ultimately be charged increasing annual fees thereby forcing more financial hardships on an already depressed industry.

*What suggestion?*  
Response. The Commission believes that its IOAA fee schedule is fully supported by applicable legal precedent and does not adopt commenter's suggestion. In upholding the Commission's IOAA fee schedule, the United States Court of Appeals for the Fifth Circuit held that the NRC may recover the full cost of providing a service to an identifiable recipient. (Emphasis in original) *where?*  
Mississippi Power & Light v. NRC, 601 F.2d at 230. This is consistent with the earlier teaching of National Cable Television Ass'n Inc. v. FCC, 554 F.2d 1094, 1106 (D.C. 1976) relied upon by



the court in Central & S Motor Freight Tariff Ass'n, supra. There the court held that fees should be a reasonable approximation of the attributable costs which the Commission identifies as being expended to benefit the recipient. The Court suggested that a fee might be questionable if the fee unreasonably exceeds the value of the specific services for which it is charged. Here the services provided by the NRC are required for licensees to maintain their licenses and the benefits derived therefrom. The basis for the revised hourly rates is fully discussed in NRC's response to comment A.2.a. which relate<sup>5</sup><sub>4</sub> to the hourly rates being assessed by NRC under 10 CFR Part 170. The commenter has provided virtually no evidence that could cause the NRC to conclude that its fees unreasonably exceed the value of the services rendered.

In FY 1995, the NRC changed the methodology for allocating those budgeted costs (about 10 percent of the NRC budget authority) that cause fairness and equity concerns because the legislation requested by the NRC had not been passed by the Congress (60 FR 32218; June 20, 1995). These costs, which include the cost of the Agreement State oversight and regulatory support to the Agreement States, are now treated in a manner similar to overhead. These costs are distributed based on the percentage of the budget directly attributable to a class of licensees. Commenters at that time supported this method of allocation as being more equitable, pending legislative relief by

Congress to remedy this inequitable situation. If additional states become Agreement States and the NRC decides to rebaseline the fees based on substantive changes to the budget, then any increased cost for Agreement State oversight and regulatory support to the Agreement States would be identified, treated similar to overhead, and distributed based on the percentage of the budget directly attributable to a class of licensees.



The NRC also revised its methodologies in the FY 1995 final rule for determining annual fees for fuel facility and uranium recovery licensees. The revised methodologies resulted in annual fees that more accurately reflect the costs of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. ~~The revised methodologies resulted in annual fees that more accurately reflect the costs of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees.~~ The revised methodologies were fully explained in Section IV, Section-by-Section Analysis, of the final FY 1995 rule (60 FR 32218; June 20, 1995).

In response to comments relative to annual fees <sup>in</sup> (increases as a result of the decrease in the number of licensees, the changes adopted in the FY 1995 final rule to stabilize fees should minimize large fee changes as a result of decreases in licensees.

3. Annual fees for Certificates of Compliance issued to the

United States Enrichment Corporation.

a. Comment. The United States Enrichment Corporation (USEC) commented that the annual fee<sup>s</sup> of \$2,600,000 which have been proposed for the first time for each of the two enrichment facilities are not fair and equitable when compared to those imposed on similar facilities regulated by the NRC. *The USEC stated that* The rationale for this as expressed in the NRC's proposed rule is an unsupported assertion that the relative weighted safety and safeguards factors for USEC's facilities are similar to a high enriched uranium facility. USEC believes this rationale is incorrect, unsupported by the facts, and contradictory to the NRC's own licensing actions. USEC indicates that the NRC has, in fact certified USEC's gaseous diffusion plants (GDPs) as low enriched uranium facilities and as part of that licensing action, the NRC has approved safeguards measures appropriate for low enriched uranium facilities and has not imposed the safeguards measures required at high enriched facilities possessing strategic special nuclear material. USEC indicates that in accordance with the joint statement of understanding between the NRC and the Department of Energy (DOE), DOE is solely responsible for any strategic special nuclear material which may be located at the Portsmouth, OH, GDP and that the presence of any such high enriched uranium at the Portsmouth GDP is not relevant to the NRC's fee-setting process. USEC states that the NRC methodology for determining annual fees for major fuel facilities, presented

in the June 20, 1995 Federal Register, clearly states that the issued license is the source for determining authorized nuclear material and use/associated activity and is the determining factor in placing a licensee into one of the five fuel facility license fee categories created in the NRC's methodology. USEC ~~Arques~~ *Arques*  that the GDPs are clearly in the low enriched fuel category on the basis of the issued licenses (certificates) and not in the high enriched-fuel category. <sup>U</sup>USEC states that the NRC's proposal  to put the GDPs into the same fee category as high enriched fuel facilities has not been justified by the cited NRC methodology and appears to be arbitrary and that the NRC has provided no basis for its conclusion that the relative weighted safety and safeguards factors for the GDPs are similar to a high enriched uranium facility. USEC states that the annual fee for the GDPs should be the same as that set for other low enriched facilities, \$1,276,000 annually.

Response: NRC does not dispute that the GDPs have been certified as low enriched uranium facilities with corresponding safeguards measures for category III facilities. NRC recognizes that DOE maintains sole regulatory responsibility for strategic special nuclear material that may be located at the Portsmouth GDP. The NRC methodology for determining annual fees for major fuel facilities, published in the June 20, 1995 <sup>Federal Register</sup> 60 FR 32218, 32234, does state that the issued license is the source for determining authorized nuclear material and use/associated

*(Note: USEC and Subj  
Intern. & Note changes)*

Response. With respect to USEC's request that one of its certificates be exempt from annual fees, the D.C. Circuit Court of Appeals decision of March 16, 1993, directed the NRC to grant an exemption from annual fees to Combustion Engineering (CE) for one of its two low enriched uranium facilities. The NRC had previously denied the exemption request from CE. The Court concluded that "the argument that the "equal fee per license" rule is "unfair and inequitable" is persuasive only on the ground that the rule produced troubling results when applied to Combustion's circumstances." The Court saw no reason for requiring the NRC to attend to that rather rare situation in the rule itself. Thus, consistent with the Court decision and 10 CFR Part 171, if USEC feels that based on the circumstances <sup>of its</sup> ~~on their~~ particular situation it can make a strong case to the NRC for an exemption from the FY 1997 annual fees then they should do so. The NRC will consider such requests for exemption under the provisions of 10 CFR 171.11(d). In accordance with 10 CFR Part 171.11(b), such requests for exemption must be filed within 90 days from the effective date of this final rule. The filing of an exemption request does not extend the date on which the bill is payable. ~~Only the timely payment in full ensures avoidance of interest and penalty charges.~~ If a partial or full exemption is granted, any overpayment will be refunded.

B. Other Comments

enrichment facilities, which included the application fee, was moved directly to the materials schedule in §170.31. Licensees who pay the \$125,000 fee upon filing an application are given credit for the fee toward the full cost of processing the application. Licensees do not pay the full cost of processing plus the application fee of \$125,000. <sup>However,</sup> Because other major fuel facilities covered by §170.31 do not pay an application fee for a new license application, the NRC agrees with the commenter and has eliminated the \$125,000 application from §170.31, Category 1.E.

2. Fees for amendments to medical licenses.

Comment. One commenter, while indicating support for fees to recover costs of NRC regulatory activities, questioned why such a high fee (\$460) would be required to amend a medical license to add another physician to the license.

Response. In developing the revised fee schedule, the NRC was obligated under Title V of the Independent Offices Appropriation Act of 1952 to examine the costs of processing license amendments not only for medical licenses but also for <sup>all</sup> its more than 6,000 materials licenses. The amendment fee of \$460 was developed based on the "average-cost" method (flat fees). As the license fee rule is now structured, the NRC estimated that, on the average, it would expend approximately 3.7 hours of



professional effort for the processing of <sup>an</sup> ~~the~~ amendment request ~~for a~~ <sup>to the</sup> medical license. To determine the amount of the fee, the average amendment time (3.7 hours) was then multiplied by the professional hourly rate (\$125/hour) to arrive at the amendment fee of \$460 for the medical license.

3. Fee legislation.

Comment. Several commenters noted that the NRC had completed its report on fee policy as required by the Energy Policy Act of 1992 and that the NRC had send a report to Congress with legislative recommendations. The commenters commended NRC's efforts in this regard and stated that they continue to believe that 100 percent fee recovery for NRC, as mandated by OBRA-90, is inequitable and unfair to licensees because licensees are paying for certain costs that are not directly related to and do not benefit them. The commenters acknowledged that without legislative change to OBRA-90, the central problems with NRC's fees cannot be completely resolved. Commenters strongly supported more efforts to define a more equitable fee base and recommended that the NRC continue to work with Congress and the Administration and actively seek the necessary legislative changes. In this regard, commenters stated that it is time for NRC to actively pursue a legislative agenda with Congress by drafting specific language to modify OBRA-90 or the Atomic Energy Act.



### III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1997 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 1997, the NRC's budget authority is \$476.8 million, of which \$11.0 million has been appropriated from the NWF. In addition, \$3.5 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site. The FY 1997 appropriation statute states that the \$3.5 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately \$462.3 million in FY 1997 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees.

The total amount to be recovered for FY 1997, and therefore the total fees, is the same as the amount estimated for recovery for FY 1996. However, the distribution of the total amount to be collected between the two types of fees is different. The NRC estimates that approximately \$96 million will be recovered in FY 1997 from fees assessed under 10 CFR Part 170 and other receipts

compared to \$120.5 million in FY 1996. The remaining \$366.3 million in FY 1997 will be recovered through the 10 CFR Part 171 annual fees. Because the <sup>estimated</sup> 10 CFR Part 170 fees and other offsetting receipts for FY 1997 <sup>are</sup> ~~is~~ below the estimate<sup>s</sup> for FY 1996, annual fees must increase. The lower estimate for 10 CFR Part 170 fees plus other changes cause an 8.2 percent increase in FY 1997 annual fees compared to FY 1996. These changes are more fully explained in Section B. The following examples illustrate the changes in annual fees.

<u>Class of Licensees</u>	<u>FY 1996 Annual Fee</u>	<u>FY 1997 Annual Fee</u>
Power Reactors	\$2,746,000	\$2,972,000
Nonpower Reactors	52,800	57,200
High Enriched Uranium Fuel Facility	2,403,000	2,600,000
Low Enriched Uranium Fuel Facility	1,179,000	1,276,000
UF <sub>6</sub> Conversion Facility	597,800	647,000
Uranium Mills	57,000	61,600
<u>Typical Materials Licenses</u>		
Radiographers	13,000	14,000
Well Loggers	7,500	8,200
Gauge Users	1,600	1,700
Broad Scope Medical	21,700	23,500

Because the final FY 1997 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 1997 will become

effective 60 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee upon publication of the FY 1997 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1997 final rule will be billed at the FY 1997 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services.

*10 CFR*  
\* Three amendments have been made to 10 CFR Part 170 and one change in practice under Part 170. These amendments do not change the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the NRC is amending §170.11 of the Commission's fee regulations to add an exemption provision for those amendments to materials portable gauge licenses referencing NUREG 1556, Volume 1, that will change only the name of the Radiation Safety Officer (RSO). This change is consistent with the proposed regulatory approach outlined in draft NUREG-1556, Volume 1, entitled

*add a fourth - deleting 29 \$125,000 application fee for category 1E. Note: although this may not be major, it is a response to a comment.*

"Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Portable Gauge Licenses" issued October 3, 1996, for public comment. No amendment fees will be assessed for the amendments to portable gauge licenses because the regulatory program outlined in the final NUREG-1556, Volume 1, includes commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application, then a technical review ~~is not required~~. NUREG 1556, Volume 1, was finalized on May      1997.

Second, the two professional hourly rates established in FY 1996 in \$170.20 are revised based on the FY 1997 budget. These rates are based on the FY 1997 direct FTEs and that portion of the FY 1997 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF or the General Fund. These rates are used to determine the Part 170 fees. The NRC has established a rate of \$131 per hour (\$233,055 per direct FTE) for the reactor program. This rate is applicable to all activities whose fees are based on full cost under \$170.21 of the fee regulations. A second rate of \$125 per hour (\$222,517 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to all materials activities whose fees are based on full cost under \$170.31 of the fee regulations. In the FY 1996 final fee rule, these rates were \$128 and \$120 respectively.

The two rates are based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Third, the NRC has adjusted the current Part 170 licensing and inspection fees in §§170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license and amendment) for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

*based on* Evaluation of the historical data *the NRC has the fees related to* shows that the average number of professional staff hours needed to complete materials licensing actions ~~be~~ increased in some categories and decreased *the fees* in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1995. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the nuclear materials professional hourly rate for FY 1997 of \$125 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1995 (60 FR 32218; June 20, 1995). For new materials licenses, the licensing fees for FY 1997 are increased in approximately 70 percent of the categories, while the proposed fees for materials amendments will increase in over 60 percent of the categories.

In addition to the above rule changes, the NRC is clarifying *will be* how it would recover the costs of post-implementation reviews of *only* changes licensees make without prior NRC review; for example, changes under §§50.54, 50.59 and 70.32. Licensees will be billed *when* for post-implementation review of these changes under §§170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed *inspection reports* *are* *issued?* *if so, state* *that in the rule*



for any pre-implementation interactions, including any review prior to licensee submissions, between NRC and licensees. As in the past, any pre-implementation interaction will not be fee bearing. The NRC informed reactor licensees on May \_\_, 1997, that their submittals under §50.54(a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of §50.54. The NRC will then verify that the changes are in compliance with §50.54.

*Cont. activity*

In summary, the NRC has:

- (1) Revised the two 10 CFR Part 170 hourly rates;
  - (2) Revised the licensing (application and amendment) fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service;
  - (3) Added a provision to the regulations exempting from 10 CFR Part 170 fees certain amendments to materials portable gauge licenses issued in accordance with NUREG-1556 Volume 1; and
  - (4) *Eliminated the \$125,000 application fee for fee Category 1E.*
  - (5) Changed the procedure whereby charges under Part 170 will be made for post-implementation quality assurance plan, safeguards contingency plan and emergency plan changes.
- review of*

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance.

Because the total amount estimated for recovery through fees in FY 1997 is the same as the amount for FY 1996, establishing new baseline fees is not warranted for FY 1997. While the total amount to be collected is the same, the distribution between Part 170 and 171 fees ~~would~~<sup>has</sup> change<sup>d</sup>. In FY 1996, 26~~%~~<sup>percent</sup> was estimated to be collected from 10 CFR Part 170 fees. This decreases to 21~~%~~<sup>percent</sup> in FY 1997. Therefore, to recover 100 percent of the budget, 10 CFR Part 171 annual fees must increase in FY 1997 compared to FY 1996. The NRC is establishing the FY 1997 annual fees for all licensees at a level of 8.2 percent above the FY 1996 annual fees. The 8.2 percent increase results primarily from a reduction in the amount of the budget recovered for 10 CFR Part 170 fees, a reduction in other offsetting adjustments, and reduction in the number of licensees paying annual fees. In addition, the NRC has made adjustments to recognize that all fees billed in a fiscal year are not collected in that year. Table I shows the total budget and amounts of fee billed and collected for FY 1996 and FY 1997.

TABLE I

Calculation of the Percentage Change to the FY 1996 Annual Fees

	(Dollars in Millions)	
	<u>FY96</u>	<u>FY97</u>
Total Budget	\$473.3	\$476.8
Less NWF	-11.0	-11.0
Less General Fund (Hanford Tanks)	<u>---</u>	<u>-3.5</u>
Total Fee Base	\$462.3	\$462.3
Less Part 170 Fees	114.5	96.0
Less other receipts	<u>6.0<sup>1/</sup></u>	<u>----</u>
Part 171 Fee Collections Required	\$341.8	\$366.3
<u>Part 171 Billing Adjustments<sup>2/</sup></u>		



additional 0.8 percent. For example, the Haddam Neck power reactor ceased operations in December 1996 and the fuel has been permanently removed from the reactor. Therefore, the utility will pay only a partial annual fee in FY 1997. In addition, Massachusetts became an Agreement State on March 21, 1997, and approximately 425 NRC licenses were transferred to Massachusetts. These licenses will pay only one half of the annual fee for FY 1997.

Third, an annual fee is established in §171.16(d), fee Category 1.E., for each certificate of compliance issued to the United States Enrichment Corporation (USEC) on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky and at Piketon, Ohio. The NRC assumed regulatory jurisdiction over the two plants from the U.S. Department of Energy (DOE) on March 3, 1997.

Fourth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of annual fees for FY 1997 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to FY 1997 annual fees. This change is being made in recognition of the fact that since the final FY 1996 rule was published in April 1996, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1996 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all such requests before the end of the fiscal year on

The final amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The final changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996-1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

#### IV. Section-by-Section Analysis

The following analysis of those sections that will be amended by this final rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

##### Part 170

##### Section 170.11 Exemptions.

This section is amended to add a new paragraph indicating that amendments to materials portable gauge licenses issued in accordance with NUREG 1556, Volume 1, that change only the name of the Radiation Safety Officer (RSO) are exempt from amendment fees. This change is consistent with the recent Business Process Redesign (BPR) initiative and NUREG-1556, Volume 1, issued on ~~March~~ <sup>May</sup> \_\_\_\_, 1997. No amendment fees will be assessed for the amendments issued in accordance with NUREG 1556, Volume 1, to portable gauge licenses because the regulatory program includes commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application then there is no technical review conducted by the NRC.

##### Section 170.20 Average cost per professional staff-hour.

Table II

FY 1997 Budget Authority to be Included in Hourly Rates  
(Dollars in millions)

	<u>Reactor Program</u>	<u>Materials Program</u>
Salary and Benefits	\$155.3	\$48.4
Allocated Agency Management & Support	<u>42.5</u>	<u>13.2</u>
Subtotal	\$197.8	\$61.6
<u>General and Administrative Support (G&amp;A)</u>		
Program Travel and Other Support	9.6	2.5
Allocated Agency Management and Support	<u>72.1</u>	<u>22.4</u>
Subtotal	\$81.7	\$24.9
Less offsetting receipts	<u>.1</u>	<u>-----</u>
Total Budget Included in Hourly Rate	\$279.4	\$86.5
Program Direct FTEs	1,196.9	388.7
Rate per Direct FTE	\$233,055	\$222,517
Professional Hourly Rate	\$131	\$125

Dividing the \$279.4 million budget for the reactor program by the number of reactor program direct FTEs (1196.9) results in a rate for the reactor program of \$233,055 per FTE for FY 1997. Dividing the \$86.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (388.7) results in a rate of \$222,517 per FTE for FY 1997. The Direct FTE Hourly Rate for the reactor program <sup>15</sup> ~~would be~~ \$131 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$233,055) by the

number of productive hours in one year (1776 hours) as indicated in the revised OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program ~~would be~~<sup>is</sup> \$125 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$222,517) by the number of productive hours in one year (1776 hours). The FY 1997 rate is slightly higher than the FY 1996 rate due in part to the Federal pay raise given to all Federal employees in January 1996.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The NRC is revising the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1997 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in §170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1997 hourly rate for the reactor program, as shown in §170.20. The fees in §170.21 for the review of import and export licensing, facility Category K,

and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the ~~proposed~~ materials program professional hourly rate of \$125 per hour for FY 1997. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1995 (60 FR 32218; June 20, 1995). Thus the revised hours used to determine the fees for FY 1997 reflect the changes in the licensing program that have occurred since that time. For new licenses, the fees for FY 1997 are increased in approximately 70 percent of the fee categories, while the fees for amendments have increased in over 60 percent of the fee categories.

The "flat" fees in \$170.31 for the review of ~~import and export~~ licensing applications have increased from FY 1996 as a result of the increase in the hourly rate and the results of the biennial review. The licensing "flat" fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule will be subject to the fees in this final rule.



The amounts of the materials licensing "flat" fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees that are greater than \$1,000 but are less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000. Fees under \$1,000 are rounded to the nearest \$10.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$125, as shown in \$170.20, <sup>applies</sup> ~~apply~~ to those professional staff hours expended on or after the effective date of the final rule.

*Add statement regarding elimination of the \$125,000 application fee for fee Category 1E.*

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§50.54, 50.59 and 70.32. Licensees will be billed for post-implementation reviews of these changes under §§170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions including any review prior to licensee submissions, between the NRC and licensees. As in the past, any pre-implementation interaction will not be fee-bearing. The NRC informed reactor licensees on May \_\_, 1997, that their submittals under §50.54(a), (p) and (q) should not ask

?  
? continuation ?

for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of §50.54. The NRC will then verify that the changes are in compliance with §50.54.

#### Part 171

##### Section 171.13 Notice.

The language in this section is revised to indicate that in the unlikely event the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC will continue to assess fees at the same rates as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991 when 100 percent fee recovery was initiated. However, the possibility exists that the NRC might be unable to establish fees for a current fiscal year through the notice and comment process. Therefore, as a contingency plan for meeting the requirement of OBRA-90, the NRC is amending §171.13 to indicate that if the NRC is unable to promulgate a final fee rule within a current fiscal year, then fees will continue to be assessed at the same rates as the previous fiscal year. The NRC will continue to work diligently to publish the fee rules at the



NRC is establishing an annual fee of \$2,600,000 for each of the two facilities. The NRC methodology for determining annual fees for major fuel facilities was explained in the FY 1995 final fee rule published in the Federal Register on June 20, 1995 (60 FR 32234). As indicated in the Federal Register, the methodology can be applied to determine annual fees for new licenses or certificates. The NRC has applied the methodology to the USEC facilities and has concluded that the relative weighted safety and safeguards factors for these facilities is similar to a high enriched uranium facility. Therefore, the NRC is establishing the annual fee for each USEC uranium enrichment facility at \$2,600,000, the same as that for a high enrichment facility (fee category 1.A.(1)(a)). Because the certifications are in effect for the last six months of FY 1997, the NRC will assess one-half of the annual fee or \$1,300,000 to USEC for each certificate, ~~for the last half of FY 1997.~~

The amount or range of the FY 1997 annual fees for all materials licensees is summarized as follows:

<u>Materials Licenses</u> <u>Annual Fee Ranges</u>	
<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel facility	\$2,600,000
Part 70 - Low enriched fuel facility	\$1,276,000
Part 40 - UF <sub>6</sub> conversion facility	\$647,000

Part 40 - Uranium recovery facilities	\$22,300 to \$61,600
Part 30 - Byproduct Material Licenses	\$490 to \$23,500 <sup>1/</sup>
Part 71 - Trans- portion of Radioactive Material	\$1,000 to \$78,700
Part 72 - Independent Storage of Spent Nuclear Fuel	\$282,000

<sup>1/</sup> Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$420,000.

Footnote 1 of 10 CFR 171.16(d) is amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to the FY 1997 annual fees.

#### Section 171.17 Proration.

The NRC is amending the proration provisions in §171.17 for reactor and materials licenses. Paragraph (a) is amended to reflect the changes in 10 CFR Part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). Reactor annual fees will be prorated based on the requirements of §50.82(a)(2) that upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR Part 50 license no longer authorizes

operation of the reactor or emplacement or retention of fuel into the reactor vessel. Previously the proration of reactor annual fees was based on the date of issuance of the possession only license (POL).

Paragraph (b) is amended to recognize that materials licenses transferred to a new Agreement State are considered terminated by the NRC for annual fee purposes, on the date that the Agreement with the State becomes effective. The State of Massachusetts became an Agreement State on March 21, 1997, and approximately 425 licenses were transferred to the State on the effective date of the Agreement. The NRC will assess the annual fees for those licenses being transferred to the State of Massachusetts using the current proration provisions of §171.17(b) whereby the licenses will <sup>be</sup> considered terminated on the effective date of the Agreement with Massachusetts.

New licenses issued during FY 1997 will receive a prorated annual fee in accordance with the current proration provision of §171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1997, will not be assessed an annual fee for FY 1997. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees will be subject to the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

Section 171.19 Payment.

Paragraph (b) is revised to give credit for partial payments made by certain licensees in FY 1997 toward their FY 1997 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1997 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC ~~will~~ <sup>will</sup> credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) is revised to update fiscal year references. Paragraph (d) is revised to modify the billing schedule for terminated materials licenses and new materials licenses. Licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

As in FY 1996, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This final rule applies to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through

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

~~(2) Applications for licenses under Category 1E must be accompanied by the prescribed application fee of \$125,000.~~

(b) License/approval/review fees. Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with §170.12(b), (e), and (f).

(c) Renewal/reapproval fees. Applications subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with §170.12(d).

(d) Amendment/Revision Fees.

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with §170.12(c).



and device evaluations as shown in Categories 9A through 9D.

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

4/ Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

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7. Section 171.13 is revised to read as follows.

§171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the FEDERAL REGISTER as soon as is practicable but no later than the third quarter of FY 1997 and 1998. The annual fees will become due and payable to the NRC in accordance with §171.19 except as provided in §171.17. Quarterly payments of the annual fees of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees <sup>will</sup> ~~would~~ be assessed based on the rates in effect for the previous fiscal year.

8. In §171.15, paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in §171.11(a)(1) and (a)(2).

(b) The FY 1997 uniform annual fee for each operating power reactor which must be collected by September 30, 1997, is \$2,972,000. This fee has been determined by adjusting the FY 1996 annual fee upward by 8.2 percent. In the FY 1995 final

(b) All Others:

*Give up*

General Electric	SNM-960	\$345,000
B.	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).	\$282,000
C.	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.	\$1,300
D.	All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2).	\$3,000
E.	Licenses or certificates for the operation of a uranium enrichment facility.	\$2,600,000

## Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final action as defined by the Act. The NRC's fee rule published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, meets the thresholds for being considered "major" under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1997. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1997 annual fees assessed under 10 CFR Part 171. Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with 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, P.O. Box 954514, St. Louis, MO 63195-4514.

The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC effective May 11, 1995. The small entity size standards are found in 10 CFR 2.810 of the NRC's regulations. To comply with

granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies resulting in a fee of ~~either~~ \$900 or \$200~~x~~ for each fee category billed instead of the full annual fee of \$1,800 or \$400.

*small entity*

4. A new small entity form is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed form, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195-4514.
5. Questions regarding fee bills may be posed orally or in writing. Please call the license fee staff at 301-415-7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.