



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

May 5, 1997

PDR

AF 55-2

MEMORANDUM TO: James L. Blaha  
Assistant for Operations, EDO

FROM: John J. Surmeier, Deputy Director  
Program Management, Policy Development  
and Analysis Staff, NMSS *John J. Surmeier*

SUBJECT: FINAL NOTICE OF RULEMAKING -- 10 CFR PARTS 170 AND 171 --  
100 PERCENT FEE RECOVERY FOR FY 1996

NMSS concurs in J. Funches' April 24, 1997, final rule for the FY 1997 fees to be assessed to recover 100 percent of the NRC budget authority. The information requested by the CFO regarding NUREG 1556 is annotated in the attached pages 30 and 38.

Attachment: As stated

CONTACT: Claudia A. Seelig, PAB/PMDA/NMSS  
415-7243

AF 55-2  
015

9706250023

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~~ <sup>expected to be issued</sup> *May 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.

"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~~ <sup>is</sup> finalized ~~on~~ May ~~1997~~ 1997.

*is expected to be*

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.



MEMORANDUM TO:

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

April 24, 1997

L. Joseph Callan  
Executive Director for Operations

Carlton R. Stoiber, Director  
Office of International Programs

Edward L. Halman, Director  
Office of Administration

Trip B. Rothschild, Deputy Assistant  
General Counsel/Legislative Counsel  
Office of the General Counsel

FROM:

Jesse L. Funches *Jesse Funches*  
Chief Financial Officer

SUBJECT:

FINAL NOTICE OF RULEMAKING -- 10 CFR PARTS 170 AND 171 --  
100 PERCENT FEE RECOVERY FOR FY 1997

Attached for your concurrence is a final rule for the FY 1997 fees to be assessed to recover 100 percent of the NRC budget authority.

Please note that in order to meet the time schedule for this final rule, we are providing each addressee a separate concurrence copy. Please provide your concurrence as quickly as possible, but no later than COB, Wednesday, May 7, 1997. Please note that there may be some minor changes to the rule, i.e., amounts of the fees, date and number of the NMSS NUREG document, etc.

If you have any questions, please contact me on 415-7322 or Jim Holloway on 415-6213. Thank you for your assistance in this matter.

Attachment: As stated

cc: T. Barchi, OIG  
C. Paperiello, NMSS  
S. Collins, NRR  
A. Galante, CIO  
H. Bell, OIG

*Jim will pick it up*

*9406240335 27PP*  
*AF55-2*  
*009*

*PDR*  
*AF55-2*

*5-7-97*

*OGC*  
*Comments*  
*Trip*

[7590-01-P]

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 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 greater 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.

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) Mississippi Power & Light v. NRC, 601 F.2d at 230 (5th Cir. 1999). 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



enriched fuel facilities. The large size and scope of the GDP operations require substantially more effort for the development of inspection procedures, guidance, and schedules. This large size and scope is also expected to result in a higher number of reportable events that NRC staff must review.

The complexity, higher potential accident consequences, and large size and scope of the GDP operations require the NRC to provide generic regulatory programmatic effort that is of a scope, depth of coverage, and rigor equivalent to that for a high enriched fuel facility. This level of generic effort is the basis for assigning the two GDPs to the high enriched fuel facility category for the purpose of determining and assessing annual fees in FY 1997.

*Directing see NRC to*  
b. Comment. USEC also indicated that based on the March 16, 1993, D.C. Court of Appeals decision ~~to~~ grant <sup>^</sup> Combustion Engineering an exemption from fees for one of its two low enriched uranium plants located in Hematite, Missouri and Windsor, Connecticut, it too deserves to be considered for an exemption because it <sup>two enrichment facilities are</sup> ~~is not operationally equivalent to the~~ <sup>operationally equivalent to a single plant because facilities</sup> plants run by the full scope fuel fabricators. Therefore, the commenter requests that the NRC reconsider the implication of the Court's holding with respect to the disproportionate allocation of its costs under 10 CFR 171.11(d), especially as the allocation of these costs adversely impacts the licensee.

*because they are part of the process to produce  
enriched uranium product*  
20

*in Allied Signal, Inc. v. NRC,  
988 F.2d 146 (D.C. Cir. 1993)*

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 13, 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 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

*The court found that the two facilities in the aggregate were operationally equivalent to the single-plant, single-license facilities of other low enriched uranium manufacturers.*



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. 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 <sup>fee</sup> 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 its more than 6,000 materials licenses. The amendment fee of \$460 was developed based on the "average-cost" method (flat fees) <sup>for medical licenses</sup>. As the license fee rule is now structured, the NRC estimated that, on the average, it would expend approximately 3.7 hours of

*need support why takes 3 hours of staff time - what is done - justify?*

*1 am not concerned  
specially in light of p. 58*

Response. The need for legislation is beyond the scope of this rulemaking proceeding. As indicated in the FY 1996 final rule (61 FR 16203; April 12, 1996), the NRC will continue to work with the Congress to make fees more fair and equitable. As part of its Strategic Assessment and Rebaselining initiative, the Commission considered issues associated with fees. After evaluation of comments from stakeholders, the Commission concluded that in order to make annual fees more fair and equitable for all NRC licensees, the Commission must seek Office of Management and Budget and Congressional authorization to remove certain NRC activities that do not directly benefit NRC licensees from the fee base and instead fund those activities from non fee-based appropriations or separate appropriations. To this end, the Commission has requested the staff to prepare an update to its February 1994 report that was sent to Congress on this matter. This report update will consider changes that have occurred or clearly will occur since the Commission issued the report to Congress.

4. Fees based on other factors.

Comment. One commenter, while understanding the need for NRC to be financially self-sufficient, was concerned about the effect of an 8 percent increase in annual fees on rural hospitals. The commenter states that the annual fees should be revised to take into account the small, low procedure volume, one

room, one camera, diagnostic nuclear medicine department who pays the same annual fee as a large metropolitan hospital. Another commenter indicated, however, that the NRC's intention to continue small entity and lower tier small entity fees based on market volume (gross annual receipts) is necessary and proper in order to aid in the survival of small firms.

Response. The issue of basing fees on the amount of material possessed, the frequency of use of the material, the size of the facilities, and market competitive positions, was addressed by the NRC in previous rules and in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). The NRC did not adopt that approach because it would require licensees to submit large amounts of new data and would require additional NRC staff to evaluate the data submitted and to develop and administer even more complex fee schedules. The NRC continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee within a class to determine the amount of the annual fee is a fair, equitable, and practical way to recover those costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993, decision in Allied-Signal, supra.

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.

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 <sup>issued in accordance with</sup> ~~referencing NUREG-1556, Volume~~ <sup>1</sup> 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

*no need to refer to NUREG-1556 has been removed*

*Revised*

"Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Portable Gauge Licenses" issued <sup>May 1997</sup> ~~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.



*Manual*

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.

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions be increased in some categories and decreased 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 how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; *specifically* for example, changes under §§50.54, 50.59 and 70.32. Licensees will be billed 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

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.

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) Changed the procedure whereby charges under Part 170 will be made for post-implementation quality assurance plan, safeguards contingency plan and emergency plan changes.

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 change. In FY 1996, 26% was estimated to be collected from 10 CFR Part 170 fees. This decreases to 21% 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>		

September 30, 1996. Similar situations existed after the FY 1991-1995 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fifth, the NRC has amended the proration provisions in §171.17 for reactor and materials licensees. The reactor provision in §171.17(a) is revised 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). The materials provision is amended to recognize that licenses transferred to an Agreement State as a result of a new Agreement are effectively terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective.

Sixth, §171.19 is amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1997 either toward their total annual fee to be assessed or to make refunds, if necessary. This section is amended to modify the annual fee billing schedule for materials licenses terminated and new materials licenses issued during the fiscal year.

The NRC will send a bill to reactors and major fuel cycle facilities for the amount of the annual fee upon publication of the FY 1997 final rule. For these licensees, payment will be due on the effective date of FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 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 final FY 1997 rule would be billed, at the FY 1997 revised rates, during the anniversary month of the license and payment would be due on the date of the invoice.

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 May 1997.~~ No amendment fees will be assessed for the ~~same~~ 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.

*Refer to BPR and NUREG-1556, Vol 1*

*ext*  
*2* Section 170.20 Average cost per professional staff-hour.



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 \$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 1997. 

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,

are adjusted for FY 1997 to reflect both the increase in the hourly rate and the revised average professional staff hours needed to process certain types of licensing actions.

For those applications currently on file and pending completion, footnote 2 of §170.21 is revised to provide that professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file that are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by §170.20.

do  
we have  
still  
have some  
revisions  
that  
are  
ongoing?  
yes.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are modified to recover the FY 1997 costs incurred by the NRC in providing licensing and inspection

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, apply to those professional staff hours expended on or after the effective date of the final rule.

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

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~~ <sup>a timely manner</sup> 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

earliest possible time during the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section are revised as described below. Paragraphs (a), (b), (c) (1), (c) (2), (e), and (f) are revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1997.

Paragraph (b) is revised in its entirety to establish the FY 1997 annual fee for operating power reactors and to change fiscal year references from FY 1996 to FY 1997. The fees are established by increasing FY 1996 annual fees (prior to rounding) by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as in the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

With respect to Big Rock Point, a smaller, older reactor, the NRC hereby grants a partial exemption from the FY 1997 annual



fees similar to FY 1996 based on a request filed with the NRC in accordance with §171.11.

Each operating power reactor, except Big Rock Point, will pay an annual fee of \$2,972,000 in FY 1997.

Paragraph (e) is revised to show the amount of the FY 1997 annual fee for nonpower (test and research) reactors. In FY 1997, the annual fee of \$57,200 is 8.2 percent above the FY 1996 level. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in §171.11(a)(2).

Paragraph (f) is revised to change fiscal year date references.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of

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 be 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.

Public Law 104-121, the Contract with America Advancement Act of 1996 was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a "major" rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR Part 170 and 171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1997.

## II. Impact on small entities.

The comments received on the proposed FY 1991-1996 fee rule revisions and the small entity certifications received in response to the final FY 1991-1996 fee rules indicate that NRC

ATTACHMENT 1 TO APPENDIX A

U. S. Nuclear Regulatory Commission  
Small Entity Compliance Guide  
Fiscal Year 1997

## 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~~<sup>rule</sup> 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



c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

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

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

3. The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$1,800 or \$400, for each fee category shown on the invoice depending on the size of the entity. Licensees

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

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.

6. False certification of small entity status could result in civil sanctions being imposed by the NRC pursuant to the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC implementing regulations are found in ~~10~~ 10 CFR Part 13.