Administrative Changes to Fiscal Year (FY) 2009 Proposed Fee Rule

1. Agreement State Activities

The Commonwealth of Virginia has requested to become an Agreement State effective March 31, 2009. Materials licenses transferred to a new Agreement State are considered terminated by the U.S. Nuclear Regulatory Commission (NRC). NRC assesses one-half the annual fee to licensees for which applications for termination are filed during the period October 1 through March 31 of the fiscal year (FY).

Virginia will be assuming regulatory authority for approximately 386 current NRC licensees. The number of materials users licensees will be revised to reflect that NRC will still collect one-half of the annual fee from these licensees. A larger share of the budget resources for small materials licensees will be allocated to the Agreement States surcharge category. This will help mitigate the impact on the annual fee for the remaining small materials NRC licensees. Any other changes in the number of Agreement States, and the associated impacts on annual fees, will be discussed in the fee rule, based on the latest information available at that time.

2. Adding New Fee Categories for Uranium Recovery Licensees

The staff is exploring the possibility of replacing the existing single fee category for uranium recovery in-situ leach (ISL) facilities with four fee categories based on the type of ISL facilities. The addition of the new fee categories is needed to reflect the diverse types of uranium recovery facilities planned for construction and operation in the near future. Additionally, the new fee categories will better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned.

One fee category would be for ISL Resin facility which performs ISL recovery operations and includes equipment for collection of dissolved uranium from onsite underground ore bodies onto ion exchange columns where resin beads selectively remove the uranium from solution. ISL resin facilities lack the equipment necessary to process the resins further and the resins are transported to another facility for further processing of the collected uranium into yellowcake.

A second fee category would be for an ISL yellowcake facility with zero to three satellites. These facilities include a central processing plant (CPP) with all the equipment necessary to collect uranium on resin, strip uranium from the resin, and process the uranium into a yellowcake slurry or dried yellowcake powder. These facilities may also receive resins from up to three satellite facilities for further processing of the contained uranium into yellowcake. In this regard, a satellite facility includes the same equipment and performs the same functions as an ISL resin facility where uranium-loaded resins are transported to a CPP operated by the same company or licensee for further processing of the contained uranium into yellowcake.

A third ISL fee category would be for an ISL yellowcake facility with more than three satellites. These facilities have a CPP with the same equipment as the second fee category above, but have four or more satellite facilities, which necessitate a correspondingly greater allocation of the staff's budgeted resources for oversight.

The fourth fee category would be for a Resin Toll Milling Facility. These facilities do not conduct any onsite recovery of uranium but consist of a CPP for the purpose of processing resins from other ISL facilities into yellowcake. Resource allocation for resin toll milling facilities would be less than that required for the other categories of ISL facilities.

3. Biennial Review of Fees

To comply with the Chief Financial Officers Act of 1990, on a biennial basis the NRC evaluates historical professional staff hours used to process a new license application of those material users fee categories that are subject to flat application fees. This review also includes new license and amendment applications for import and export licenses. Changes resulting from this biennial review impacts 10 CFR Part 170 flat fees for the small materials users and import and export licensees.

The program offices have completed this review for the FY 2009 fees. The Office of Federal and State Materials and Environmental Management Programs (FSME) has recommended changes to the professional staff hours for a majority of small materials users. The Office of International Operations (OIP) did not recommend any changes to the hours for the import and export licenses. Since the 10 CFR Part 170 fees for the material users license application is calculated by multiplying the professional staff hours times the hourly rate, the FY 2009 fees will be impacted by changes in the professional staff hours in addition to any changes to the hourly rate.

4. Change Small Entity Fees and Threshold

In accordance with its policy of reviewing the small entity fees biennially, the staff reviewed the small entity fees this year to determine if the fees should be changed. The small entity fees primarily impacts NRC's small materials licensees. FY 2000 was the last time that an in-depth analysis of the small entity fees was conducted. Based on an in-depth analysis conducted this year (see Appendix B), we will use alternative 3 which results in reducing the maximum small entity fee from $2,300 to $1,900 and the lower tier fee from $500 to $400. This reduction reflects the decrease in annual fees for the small materials licensees in past two years.

In addition, we are changing the methodology for reviewing small entity fees every two years. To determine the small entity annual fee, a fixed percentage of 39 percent will be applied to the prior two-year weighted average of small materials users fees in the biennial review fiscal year. This gives the small entities advance notice of a possible adjustment in fees in the biennial review year. An analysis of the method is included in Appendix B.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951, August 10, 2007) to conform to the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to $6.5 million from $5 million. The NRC is now proposing to revise the small entity lower tier receipts-based threshold to $450,000 from $350,000. This change is approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

5. Changes to 10 CFR 170.11 Exemptions

In response to number of questions on specific sub-sections related to fee exemptions for special projects, the staff is simplifying the language such that the stakeholders are clear about when a special project is exempt from NRC fees. The section has also been re-numbered for ease of reading.

6. Direct Hours per Full Time Equivalent (FTE) in the Hourly Rate Calculation

The Part 170 hourly rate is calculated by dividing the cost per direct FTE by the number of direct hours per direct FTE in a year. The FY 2008 Fee Rule used 1,371 hours per direct FTE in the hourly rate calculations. The FY 2007 fee rule used 1,287 direct hours. The change to the 1,371 hours per direct FTE to develop the hourly rate in FY 2008 was consistent with the Office of the Chief Financial Officer's (OCFO's) response to an Office of the Inspector General recommendation that actual cost and labor data be used to develop and refine future rate calculations.

For FY 2009, we are looking at the latest time and labor data to determine if the direct hours per FTE should be revised. A revision in the direct hours per FTE may also result in a change to the hourly rate.