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

March 15, 2000

MEMORANDUM TO: David L. Meyer, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

FROM: Diane B. Dandois, Chief
License Fee and Accounts Receivable Branch
Division of Accounting and Finance
Office of the Chief Financial Officer

SUBJECT: PROPOSED NOTICE OF RULEMAKING -- 100 PERCENT FEE RECOVERY FOR FY 2000

Attached for your action are the following items relating to the publication of the subject proposed rule which was signed by the Chief Financial Officer on March 14, 2000.

1. Original and 25 copies of the Proposed Notice of Rulemaking - 10 CFR Parts 170 and 171.

2. Six Congressional letters relating to the proposed rule.

3. Draft public announcement.

The proposed rule is consistent with Commission fee policy decisions and does not constitute a significant question of policy nor does it amend regulations contained in 10 CFR Part 7, 8, or 9 Subpart C concerning matters of policy.

Given the time urgency, the proposed rule should be published immediately. We are also attaching for your files a copy of the "Approved for Publication" and "Daily Staff Notes to the Commission."

Thank you for your assistance in this matter.

Attachments: As stated

cc: Walt Oliu, CIO

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 2000, less amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2000 is approximately $447.0 million.

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

requires that NRC collect the FY 2000 fees by September 30, 2000, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678).

Comments may also be submitted via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov. Comments received may also be viewed and downloaded electronically via this interactive rulemaking website.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 202-634-3273 or by email to pdr@nrc.gov.

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001.

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

SUPPLEMENTARY INFORMATION:

I. Background.

II. Proposed Action.

III. Plain Language.

IV. Voluntary Consensus Standards.

V. Environmental Impact: Categorical Exclusion.

VI. Paperwork Reduction Act Statement.

VII. Regulatory Analysis.

VIII. Regulatory Flexibility Analysis.

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I. Background

OBRA-90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other

assistance provided to the Department of Energy (DOE) and other Federal agencies were excluded from the fee recovery requirement for FY 2000 by the FY 2000 Energy and Water Development Appropriations Act.

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

This proposed rule is based on the current 100 percent fee recovery requirement under OBRA-90. To address fairness and equity concerns related to NRC licensees paying for agency expenses which do not provide a direct benefit to them, the NRC has submitted legislation to the Congress which would reduce the fee recovery amount to 98 percent for FY 2001, and further reduce the fee recovery amount by an additional two percent per year beginning in FY 2002 until the fee recovery requirement is reduced to 90 percent by FY 2005.

Also, in the FY 1999 final fee rule published June 10, 1999 (64 FR 31450), the NRC responded to a comment requesting that NRC designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a)

Program. The Commission agreed to give further consideration to the issue raised by this commenter.

The Commission has declined to adopt the suggested approach, for the following reasons. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than $5 million in average annual gross receipts over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or fewer employees during the preceding 12-month period would qualify as small entities (10 CFR 2.810).

The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 2000 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 2000, the NRC's budget authority is $470.0 million, of which $19.15 million has been appropriated from the NWF. In addition, $3.85 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 2000 Appropriations Act states that this $3.85 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately $447.0 million in FY 2000 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 2000 is $2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule.

The NRC estimates that approximately $106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts. The remaining $341.0 million would be recovered through the Part 171 annual fees.

The NRC also estimates a net adjustment for FY 2000 of approximately $5.7 million for the small entity subsidy, for FY 2000 invoices that would not be paid in FY 2000, and for payments received in FY 2000 for FY 1999 invoices. These adjustments are approximately $2.5 million more than in FY 1999. In addition, there are approximately 530 fewer licenses subject to annual fees in FY 2000 than in FY 1999, due primarily to Ohio becoming an Agreement State in August, 1999.

As a result of these changes, the proposed FY 2000 annual fees would increase slightly, by approximately 1.4 percent, compared to the FY 1999 actual (prior to rounding) annual fees. As a result of rounding, the proposed FY 2000 annual fees for several fee categories are the

same as the final (rounded) FY 1999 annual fees. The change to the annual fees is described in more detail in Section B. The following examples illustrate the changes in annual fees:

Class of Licensees	FY 1999 Annual Fee	FY 2000 Proposed Annual Fee
Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning fee)	$2,776,000	$2,815,000
Spent Fuel Storage/Reactor Decommissioning	206,000	209,000
Nonpower Reactors	85,900	87,100
High Enriched Uranium Fuel Facility	3,281,0000	3,327,000
Low Enriched Uranium Fuel Facility	1,100,000	1,116,000
UF_6 Conversion Facility	472,000	478,000
Uranium Mills	131,000	132,000
Typical Materials Licenses		
Radiographers	14,700	14,900
Well Loggers	9,900	10,100
Gauge Users	2,600	2,600
Broad Scope Medical	27,800	28,100

The final FY 2000 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2000 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2000 final rule. For these licensees, payment would be due on the effective date of the FY 2000 rule. Those materials licensees whose license anniversary date during FY 2000 falls before the effective date of the final FY 2000 rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2000 rule would be billed at the FY 2000 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue to mail the proposed fee rules to all licensees. However, the NRC announced in FY 1998 that, as a cost-saving measure, it planned to discontinue mailing the final rule to all licensees. Accordingly, the NRC does not plan to mail the FY 2000 final rule, or future final rules, to all licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in late May or early June of 2000. In addition to publication in the Federal Register, the final rule will be available on the internet at http://ruleforum.llnl.gov.

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

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended.

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the 10 CFR Part 170 fees based on the revised hourly rates. The NRC is also proposing an administrative amendment to §170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site. The proposed amendments are as follows:

1. Hourly Rates.

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in §170.20. These proposed rates would be based on the number of FY 2000 direct program full time equivalents (FTEs) and the FY 2000 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The proposed hourly rate for the reactor program is $144 per hour ($255,844 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under §170.21 of the fee regulations. The proposed hourly rate for the nuclear materials and nuclear waste program is $143 per hour ($253,450 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under §170.31 of the fee regulations. In the FY 1999 final fee rule, these rates were $141 and $140, respectively. The proposed increase is primarily due to the Government-wide pay increase in FY 2000.

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

a. Direct program FTE levels are identified for the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE I - FY 2000 Budget Authority to be Included in Hourly Rates

	Reactor Program	Materials Program
Direct Program Salaries & Benefits	$103.3M	$29.0M
Overhead Salaries & Benefits, Program Travel and Other Support	$ 53.2M	$15.3M
Allocated Agency Management and Support	$ 98.8M	$27.9M
Subtotal	$255.3M	$72.2M

Less offsetting receipts	- .1M	---------
Total Budget Included in Hourly Rate	$255.2M	$72.2M
Program Direct FTEs	997.5	284.9
Rate per Direct FTE	$255,844	$253,450
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$144	$143

As shown in Table I, dividing the $255.2 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (997.5) results in a rate for the reactor program of $255,844 per FTE for FY 2000. The Direct FTE Hourly Rate for the reactor program would be $144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($255,844) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Dividing the $72.2 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (284.9) results in a rate of $253,450 per FTE for FY 2000. The Direct FTE Hourly Rate for the materials program would be $143 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($253,450) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments.

The NRC is proposing to adjust the current Part 170 fees in §§170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§170.21 and 170.31 would be based on the proposed professional hourly rates 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 would be assessed at the FY 2000 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) would be adjusted to reflect the increase in the professional hourly rates from FY 1999. The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of §170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

3. Administrative Amendment.

The NRC is proposing to amend §170.12 (c)(1) to clarify that the fees assessed for a resident inspector's time will exclude time spent by the resident inspector in support of activities at another site. This provision was inadvertently omitted from the revision of 10 CFR 170 in the FY 1999 fee rule.

4. Other.

The NRC solicited public comment in the FY 1999 proposed fee rulemaking (April 1, 1999; 64 FR 15878) on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violations (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in the fees collected for identifiable services under Part 170 in the FY 2000 proposed fee rule. Those commenting on this issue presented arguments both for and against assessing Part 170 fees for these activities. The NRC stated in the final fee rulemaking (June 10, 1999; 64 FR 31452), that it would further evaluate this issue prior to promulgation of the FY 2000 fee rule.

Three of the four commenters who addressed this issue in FY 1999 did not support recovering the costs for these activities under Part 170. These commenters were concerned that assessing these costs to the specific licensees under Part 170 could be viewed as penalizing the licensee when the licensee identifies and corrects violations. One commenter supported Part 170 fee assessment for escalated enforcement actions, indicating that it is inappropriate for one licensee to subsidize oversight for another licensee. This commenter also stated that the perception that these actions serve as an industry-wide deterrent is not borne out.

In addition to concerns raised by the commenters, there are other problems with assessing Part 170 fees for these activities. These problems include the handling of escalated enforcement costs if the enforcement action is reduced to a non-escalated enforcement action or is dropped altogether. Based on the public comments received in FY 1999 and legal and policy concerns, the NRC will continue to recover costs for orders and escalated enforcement actions through Part 171 annual fees.

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

1. Revise the two hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates; and

3. Make an administrative amendment to §170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site.

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

The NRC proposes to revise the annual fees for FY 2000, to increase the maximum annual fees assessed to those licensees who qualify as small entities, and to make several administrative amendments. The proposed amendments are as follows:

1. Annual Fees.

The NRC proposes to amend §§171.15 and 171.16 to revise the annual fees for FY 2000 to recover approximately 100 percent of the FY 2000 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY

1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case should occur, the annual fee base would be recalculated (June 20, 1995; 60 FR 32225). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

In the FY 1999 proposed fee rule (April 1, 1999; 63 FR 15884), public comment was solicited on whether the NRC should, in future years, continue to use the percent change method and rebaseline annual fees every several years, as established in FY 1995, or return to a policy of rebaselining annual fees every year. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years, as warranted. Based on the comments received, licensees have continuing concerns about fee stability. Therefore, in the final FY 1999 fee rule (64 FR 31448; June 10, 1999), the NRC stated that it is continuing the policy of adjusting the annual fees only by the percent change in the NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. However, based on experience gained from applying the criteria from FY 1996 to FY 1999, the Commission determined that, in the future, annual fees should be rebaselined at least every three years, or earlier, if warranted.

After evaluating NRC's budget data for FY 2000 and concluding that there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC intends to continue to stabilize annual fees by adjusting the FY 1999 annual fees by the percent change in the NRC's total budget, with adjustments for the number of licensees paying fees, changes in estimated Part 170 collections and other offsetting receipts, and other changes required to assure that the amounts billed result in the required collections.

The $447.0 million to be recovered through Part 170 and Part 171 fees for FY 2000 is $2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule. The NRC estimates that approximately $106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts, compared to $107.7 million in FY 1999, a $1.7 million decrease. As the NRC explained in the FY 1999 proposed and final fee rules (April 1, 1999; 64 FR 15876 and June 10, 1999; 64 FR 31458), the amount for FY 1999 included a $4.1 million carryover from additional FY 1998 collections which reduced the total fee recovery amount for FY 1999. This circumstance does not exist for FY 2000. The $1.7 million decrease for FY 2000 is the difference between the $4.1 million reduction available in FY 1999 from FY 1998 collections and an estimated $2.4 million increase in Part 170 collections FY 2000 compared to FY 1999. The increase in estimated Part 170 collections, from $103.5 in FY 1999 to $105.9 for FY 2000, is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for project managers, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval.

The remaining $341.0 million ($447.0 million total FY 2000 fee recovery amount less $106.0 million for estimated Part 170 collections and other receipts) would be recovered through the Part 171 annual fees. The $341.0 million annual fee recovery amount for FY 2000 is approximately $1.0 million less than in FY 1999.

In addition to the slight reduction in the amount to be recovered through annual fees, the NRC estimates a net annual fee billing adjustment of approximately $5.7 million for FY 2000 resulting from: (1) bills that will not be paid in FY 2000; (2) the small entity subsidy; and (3) payments received in FY 2000 for FY 1999 invoices. The billing adjustment, which is necessary to assure that the "billed" amount results in the required collections, is approximately $2.5 million more than in FY 1999.

In addition to these changes, there are approximately 530 fewer licenses subject to annual fees in FY 2000 than in FY 1999, due primarily to Ohio becoming an Agreement State in August 1999. As a result of these changes, the proposed FY 2000 annual fees would increase slightly, by approximately 1.4 percent, compared to the FY 1999 actual (prior to rounding) annual fees. As a result of rounding, the proposed FY 2000 annual fees for several fee categories are the same as the final (rounded) FY 1999 annual fees. The effects of these changes on the annual fees are shown in Table II.

TABLE II

Calculation of the Percentage Change to the FY 1999 Annual Fees

(Dollars in Millions)

	FY 1999	FY 2000
Total Budget	$469.80	$470.0
Less NWF	-17.00	-19.15
Less General Fund (Regulatory reviews, and other assistance to other Federal agencies)	-3.20	-3.85
Total Fee Base	$449.60	$447.00
Less Part 170 Fees	-103.50	-105.90
Less other receipts	-4.20	-0.10
Part 171 Fee Collections Required	$341.90	$341.00

Part 171 Billing Adjustment[1]		
Small Entity Allowance	5.30	5.60
Estimated Unpaid Current FY Part 171 Invoices	3.40	3.30
Estimated Payments from Prior Year Invoices	-5.50	-3.20
Subtotal	3.20	5.70
Total Part 171 Billing	$345.10	$346.70

[1]These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 2000.

2. Small Entity Annual Fees.

The NRC is proposing to increase the current maximum small entity annual fee and the lower tier small entity annual fee by 25 percent. The maximum small entity annual fee would be increased from $1,800 to $2,300, and the lower tier small entity fee would be increased from $400 to $500. The current maximum small entity annual fee was established in FY 1991; the current lower tier small entity annual fee was established in FY 1992. The proposed 25 percent increase is consistent with the increase in NRC fees for other NRC materials licensees since FY 1991. The proposed increase is less than the increase in the average fees paid by small entity licensees in Agreement States during this time.

Between 1991 and 1999, changes in both the external and internal environment have affected NRC's costs and those of its licensees. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition, the structure of the fees that NRC charges to its materials licensees changed during the period between 1991 and 1999. In the past, costs for materials license inspections, renewals, and amendments were recovered through Part 170 fees for services. The costs of these activities are now included in the Part 171 annual fees assessed to materials licensees.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described in the Regulatory Flexibility Analysis, which is Appendix A to this proposed rule.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined.

3. Administrative Amendments.

a. The NRC is proposing to revise § 171.5, Definitions, to include Certificates of Compliance (Certificates) issued under Part 76. The NRC issued two Certificates of Compliance under Part 76 to the United States Enrichment Corporation (USEC) for the operation of the gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. This proposal would add Part 76 Certificates to the definition of Materials License in §171.5. This proposed change is an administrative change to codify agency practice in the definitions for 10 CFR Part 171. Section 171.16(a)(1) already provides that annual fees covered by the section apply to person(s) authorized to conduct activities under 10 CFR Part 76 for uranium enrichment. USEC has been subject to annual fees since FY 1997.

b. Section 171.15 would be revised as follows:

(1) Paragraphs (b) and (c) of §171.15 would be revised in their entirety to establish the FY 2000 annual fees for operating power reactors, power reactors in decommissioning or possession only status, and Part 72 licensees who do not hold Part 50 licenses. The fees would be established by increasing the FY 1999 actual (prior to rounding) annual fees by approximately 1.4 percent. In the FY 1999 fee rule, the NRC stated it would continue to stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The activities comprising the FY 1999 base annual fees and the additional charge (surcharge) are listed in §171.15(b)(2), (c)(2) and (d)(1) for convenience purposes.

Each operating power reactor would pay an FY 2000 annual fee of $2,815,000, which includes the proposed annual fee of $209,000 for spent fuel storage/reactor decommissioning. Each power reactor holding a Part 50 license that is in decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license would pay the spent fuel storage/reactor decommissioning annual fee of $209,000 in FY 2000.

(2) Paragraph (e) of §171.15 would be revised to establish the FY 2000 annual fee for non-power (test and research) reactors. The fee would be established by increasing the FY 1999 actual (prior to rounding) annual fee by approximately 1.4 percent. Each non-power reactor would pay an annual fee of $87,100 in FY 2000. The NRC would 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).

c. Section 171.16 would be amended as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section would be revised to reflect the proposed 25 percent increase in the small entity fees. The NRC would maintain a two-tier fee structure for licensees that qualify as small entities under the NRC's size standards. In general, licensees who qualify as small entities would pay a maximum annual fee of $2,300. A second or lower-tier small entity fee of $500 would be in place for those licensees who are considered to be very small entities for the purposes of this regulation.

(2) Section 171.16(d) would be revised to establish the FY 2000 annual fees for materials licensees, including Government agencies, licensed by the NRC. The proposed FY 2000 annual fees were determined by increasing the FY 1999 actual (prior to rounding) annual fees by approximately 1.4 percent. After rounding, the FY 2000 annual fees for several categories of materials licenses would be the same as in FY 1999. The amount or range of the proposed FY 2000 annual fees for materials licenses is summarized as follows:

<u>Materials Licenses</u>

Annual Fee Ranges

Category of License	Annual Fees
Part 70 - High enriched fuel facility	$3,327,000
Part 70 - Low enriched fuel facility	$1,116,000
Part 40 - UF_6 conversion facility	$478,000
Part 40 - Uranium recovery facilities	$30,800 to $132,000
Part 30 - Byproduct Material Licenses	$620 to $28,100[1]
Part 71 - Transportation of Radioactive Material	$2,300 to $67,600

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $363,000.

(3) Footnote 1 of §171.16(d) would be 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, 1999, and permanently ceased licensed activities entirely by September 30, 1999. All other licensees and approval holders who held a license or approval on October 1, 1999, would be subject to the FY 2000 annual fees.

Holders of new licenses issued during FY 2000 would be subject to 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, 1999, through March 31, 2000, would 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, 2000, would not be assessed an annual fee for FY 2000. Thereafter, the full annual fee would be 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 are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

d. Section 171.19 Payment, would be amended as follows:

(1) Section 171.19(b) would be revised to update the fiscal year references, and to give credit for partial payments made by certain licensees in FY 2000 toward their FY 2000 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 2000 will

have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly invoice 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 would be waived if payment is received within 30 days from the invoice date.

(2) The remainder of this section, although unchanged, is presented for the convenience of the user. As in FY 1999, the NRC would 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 would continue to be assessed quarterly). The annual fee assessed would be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than $100,000 and the revised annual fee for the current fiscal year is $100,000 or more. In this case, the revised amount would be billed to the licensees upon publication of the final rule in the Federal Register, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 2000, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2)Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 2000 before the effective date

of the FY 2000 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 2000 final rule would be billed at the FY 2000 revised rates during the anniversary month of their license.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC is proposing to:

1. Use the percent change method to determine annual fees for FY 2000. The FY 2000 annual fee for each license fee category would be determined by increasing the FY 1999 actual annual fee by approximately 1.4 percent;

2. Increase the maximum small entity annual fee from $1,800 to $2,300 and increase the lower tier small entity fee from $400 to $500; and

3. Add Certificates of Compliance issued under Part 76 to the definition of *Materials License* in §171.5

III. Plain Language

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

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 100 percent of its budget authority in FY 2000 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in National Cable Television Association, Inc. v. United States, 415 U.S. 36 (1974) and Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). This court held that--

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

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

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

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

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1999 to extend the 100 percent fee recovery requirement for the NRC through FY 2000. To comply with this statutory requirement, and in accordance with §171.13, the NRC is publishing the proposed amount of the FY 2000 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provide that--

(1) The annual fees be based on the Commission's FY 2000 budget of $470.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 2000 appropriations language provides that $3.85 million appropriated from the General Fund for activities related to regulatory reviews and other

assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in Florida Power and Light Company v. United States, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2000. The proposed rule would result in increases in the annual fees charged to licensees and holders of certificates, registrations, and approvals, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2000.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170 -- Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear

materials, Nuclear power plants and reactors, Source material, Special nuclear material.

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

PART 170 -- FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. In §170.12, paragraph (c)(1) is revised to read as follows:

<u>§170.12 Payment of Fees</u>.

* * * * *

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility.

The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (i.e., all time in a non-leave status), excluding time spent by a resident inspector in support of activities at another site. The hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

* * * * *

3. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

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

Reactor Program (§170.21 Activities)	$144 per hour
Nuclear Materials and Nuclear Waste Program (§170.31 Activities)	$143 per hour

4. In §170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility Categories and Type of Fees	Fees[1/2/]

* * * * *

K. Import and export licenses:

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

1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).

Application-new license $9,300

Amendment $9,300

2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).

Application-new license $5,700

Amendment $5,700

3. Application for export of components requiring foreign government assurances only.

Application-new license $1,700

Amendment $1,700

4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.

Application-new license $1,100

Amendment $1,100

5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.

Amendment $210

[1] Fees will not be charged for orders issued by the Commission under §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

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

* * * * *

5. Section 170.31 is revised to read as follows:

<u>§170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses</u>.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees[1]	Fee[2, 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost
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:[4]

Application $660

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 1A:[4]

Application $1300

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

Licensing and inspection ..... Full Cost

2. Source material:

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

Licensing and inspection ..... Full Cost

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

Licensing and inspection ..... Full Cost

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

Licensing and inspection ..... Full Cost

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

Application $160

C. All other source material licenses:

Application $5,600

3. Byproduct material:

A. Licenses of broad scope for the possession and use of byproduct

material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application $6,700

B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application $2,500

C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.

Application $10,300

D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This

category includes licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).

Application $2,400

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application $1,700

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application $3,300

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application $3,500

H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application $2,100

I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application $3,200

J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application $1,000

K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application $590

L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:

Application $5,600

M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application $2,300

N. Licenses that authorize services for other licensees, except:

(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and

(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application $2,400

O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:

Application $5,900

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

Application $1,300

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:

Licensing and inspection ..... Full Cost

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application $1,700

C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application $2,600

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application $6,100

B. Licenses for possession and use of byproduct material for field flooding tracer studies:

Licensing ..... Full Cost

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application $11,400

7. Medical licenses:

A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application $6,200

B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application $4,500

C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application $2,400

8. Civil defense:

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

Application $330

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

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

Application-each device $5,300

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

Application - each device $3,800

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

Application - each source $1,600

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

Application - each source $540

10. Transportation of radioactive material:

A. Evaluation of casks, packages, and shipping containers:

Licensing and inspections ..... Full Cost

B. Evaluation of 10 CFR Part 71 quality assurance programs:

Application $400
Inspections ..... Full Cost

11. Review of standardized spent fuel facilities:

Licensing and inspection ..... Full Cost

12. Special projects:[5]

Approvals and preapplication/
Licensing activities ..... Full Cost

Inspections . . . . . Full Cost

13. A. Spent fuel storage cask Certificate of Compliance:

Licensing . . . . . Full Cost

B. Inspections related to spent fuel storage cask Certificate of Compliance . . . . . Full Cost

C. Inspections related to storage of spent fuel under §72.210 of this chapter . . . . . Full Cost

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:

Licensing and inspection . . . . . Full Cost

15. Import and Export licenses:

Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.

A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple

generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.

Application - new license $9,300
Amendment $9,300

B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

Application-new license $5,700
Amendment $5,700

C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

Application-new license $1.700
Amendment $1,700

D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic

Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

Application-new license $1,100
Amendment $1,100

E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.

Amendment $210

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of Form 241) $1,200
Revisions $200

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[1] Types of fees - Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources

and devices, and certain inspections. The following guidelines apply to these charges:

(a) Application fees. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(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.

(2) Applications 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.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories 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).

(c) Amendment/revision fees.

Applications for amendments to export and import licenses and revisions to reciprocity initial applications 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.

(d) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with §170.12(c).

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now in the future) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in §170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. 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.

[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 for an application that deals only with the sealed sources authorized by the license.

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

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

PART 171 -- ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

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

§171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72, and 76.

* * * * *

8. In §171.15, paragraphs (b), (c), (d)(1), and (e) are revised to read as follows:

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

* * * * *

(b)(1) The FY 2000 annual fee for each operating power reactor which must be collected by September 30, 2000, is $2,815,000. This fee has been determined by adjusting the FY 1999 actual (prior to rounding) annual fee upward by approximately 1.4 percent.

(2) The FY 1999 annual fee was comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 1999 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 1999 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 base annual fee for operating power reactors are as follows:

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

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

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

(c)(1) The FY 2000 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $209,000. This fee has been determined by increasing the FY 1999 actual (prior to rounding) annual fee by approximately 1.4 percent.

(2) The FY 1999 annual fee was comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

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

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

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

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

(iii) Activities not currently subject to 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be

collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 2000 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter have been determined by revising the FY 1999 actual (prior to rounding) annual fee upward by approximately 1.4 percent. The FY 2000 annual fee for each nonpower reactor, unless the reactor is exempted from fees under §171.11(a), is as follows:

Research reactor	$87,100
Test reactor	$87,100

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

<u>§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</u>.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees as shown

below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)	Maximum Annual Fee Per Licensed Category
$350,000 to $5 million	$2,300
Less than $350,000	$500
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	$2,300
Less than 35 employees	$500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)	

20,000 to 50,000 ..... $2,300

Less than 20,000 ..... $500

Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less.

35 to 500 employees $2,300

Less than 35 employees $500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2000 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 2000 annual fees, which must be collected by September 30, 2000, have been determined by adjusting the FY 1999 actual (prior to rounding) annual fees upward by approximately 1.4 percent. As a result of rounding, the FY 2000 annual fee for several fee cateogries is the same as the FY 1999 annual fee. In the FY 1999 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, the number of licensees paying the fees, and other required adjustments. The FY 1999 annual fees were comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES

AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

(See footnotes at end of table)

Category of materials licenses	Annual Fees[1, 2, 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of	

U-235 or plutonium for fuel fabrication activities.

(a) Strategic Special Nuclear Material:

Babcock & Wilcox

SNM-42..... $3,327,000

Nuclear Fuel Services

SNM-124..... $3,327,000

(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:

Combustion Engineering

(Hematite) SNM-33..... $1,116,000

General Electric Company

SNM-1097 .....$1,116,000

Siemens Nuclear Power

SNM-1227.....$1,116,000

Westinghouse Electric Company

SNM-1107.....$1,116,000

(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

Framatome Cogema SNM-1168.....$438,000

(b) All Others:

General Electric SNM-960.....$319,000

B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).....See 10 CFR 171.15(c)

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.....$1,200

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).....$3,400

E. Licenses or certificates for the operation

of a uranium enrichment facility.....$2,072,000

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.....$478,000

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

Class I facilities[4].....$132,000

Class II facilities[4].....$111,000

Other facilities[4].....$30,800

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4).....$81,700

(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2).....$12,900

B. Licenses that authorize only the possession, use and/or installation of source material for shielding.....$630

C. All other source material licenses.....$11,800

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued

under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution..... $26,300

B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.....$6,400

C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These

licenses are covered by fee Category 3D..... $15,600

D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license.....$3,800

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)..... $3,500

F. Licenses for possession and use of less

than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes..... $5,800

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.....$15,000

H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons

exempt from the licensing requirements of Part 30 of this chapter..... $3,300

I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter..... $4,700

J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter..... $2,100

K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter..... $1,800

L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.....$11,300

M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution.....$5,000

N. Licenses that authorize services for other licensees, except:

(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and

(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C..... $5,300

O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license.....$14,900

P. All other specific byproduct material licenses, except those in Categories 4A through 9D..... $2,600

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear

material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material..... N/A[5]

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.....$11,500

C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material

by transfer to another person authorized to receive or dispose of the material.....$8,500

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.....$10,100

B. Licenses for possession and use of byproduct material for field flooding tracer studies..... N/A[5]

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.....$19,200

7. Medical licenses:

A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in

sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.....$15,500

B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9].....$28,100

C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This

category also includes the possession and use of source material for shielding when authorized on the same license.[9] $5,900

8. Civil defense:

   A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities $1,200

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

   A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution $6,100

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

fuel devices.....$4,400

C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.....$1,900

D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.....$620

10. Transportation of radioactive material:

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

Spent Fuel, High-Level Waste, and plutonium air packages..... N/A[6]

Other Casks..... N/A[6]

B. Quality assurance program approvals issued under 10 CFR Part 71

Users and Fabricators.....$67,600

Users.....$2,300

11. Standardized spent fuel facilities..... N/A[6]

12. Special Projects..... N/A[6]

13. A. Spent fuel storage cask Certificate of Compliance..... N/A[6]

B. General licenses for storage of spent fuel under 10 CFR 72.210..... N/A (See 10 CFR 171.15(c)

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter.....N/A[7]

15. Import and Export licenses.....N/A[8]

16. Reciprocity.....N/A[8]

17. Master materials licenses of broad scope issued to

Government agencies.....$363,000

18. Department of Energy:

A. Certificates of Compliance.....$884,000[10]

B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities.....$881,000

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[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1999, and permanently ceased licensed activities entirely by September 30, 1999. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

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

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

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

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

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

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

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

10. Section 171.19 is revised to read as follows:

<u>§171.19 Payment</u>.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds

will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of $100,000 or more and described in the Federal Register document issued under §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1999 was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 2000 would be $100,000 (subject to quarterly billing), would be issued a bill upon publication of the final rule for the full amount of the FY 2000 annual fee, less any payments received for FY 2000 based on the anniversary date billing process.

(c) Annual fees that are less than $100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but before the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials 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.

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

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 14th day of March, 2000.

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.

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

APPENDIX A TO THIS PROPOSED RULE --

DRAFT REGULATORY FLEXIBILITY ANALYSIS FOR THE

AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND

10 CFR PART 171 (ANNUAL FEES)

I. Background.

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

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

The Omnibus Budget Reconciliation Act (OBRA-90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear

Waste Fund, by assessing license and annual fees. OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 2000 is approximately $447.0 million.

Since 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue the policy established in FY 1995 to adjust the annual fees by the percent change method, unless there was a substantial change in the total NRC budget or the magnitude of the

budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished.

After evaluating budget data for FY 2000, the NRC has concluded that there has not been a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees since FY 1999. Therefore, the NRC's proposed FY 2000 annual fees have been determined by the percent change method based on FY 1999 annual fees. As a result, the FY 2000 annual fees for all licenses would increase by about 1.4 percent.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2000 fee rule as required by law.

II. Impact on small entities.

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials

program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,200 licensees for FY 1999) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of

the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees for materials licenses were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

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

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

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

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

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

III. Maximum Fee.

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States; Washington, Texas, Illinois, Nebraska, New York, and Utah were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Between 1991 and 1999, changes in both the external and internal environment have impacted NRC costs and those of its licensees. The upper and lower tier maximum small entity annual fees did not change in those years. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the

NRC small entity fee established in 1991 should be revised. In addition to these increases, the structure of the fees that NRC charges to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through Part 170 fees for services, are now included in the Part 171 annual fees assessed to materials licensees.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established. The amount of the small entity subsidy paid by other licensees for these regulatory costs was $4.3 million in FY 1991. With the addition of the lower tier small entity fee in FY 1992, the small entity subsidy increased to $5.4 million, or about $2,700 for each of the 2000 small entities in FY 1992. Although the number of small entities had declined to approximately 1,200 by 1999, the FY 1999 small entity subsidy was $5.3 million, or about $4,400 for each small entity.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described below.

A. Analysis of Maximum Small Entity Annual Fee

The analysis included a review of the fee structures in Agreement States to determine what fees they currently assess small entities. To maintain consistency and to facilitate direct comparisons between 1991 and 1999, the analysis focused on the fee categories used in 1991 and included fees imposed by the six benchmark Agreement States used in 1991 and five other Agreement States with the highest number of licenses.

The eleven states selected were: California, Texas, New York, Florida, Illinois, Tennessee, Maryland, Georgia, Washington, Utah, and Nebraska. Seven NRC fee categories were selected for review based on the number of small entities present in the category and inclusion of the category in the 1991 review. The fee categories selected were: 3M-Research and Development, 3N-Services, 3O-Industrial Radiography, 3P-Gauges and Other Industrial Uses, 5A-Well Logging, 7A-Teletherapy, and 7C-Nuclear Medicine. Together these categories comprise 80 percent of NRC's small entity licensees for FY 1999.

Among the eleven Agreement States reviewed, the fee structures varied both in terms of the fee amounts and the services included in the fees. Of the eleven states, only Georgia and Washington provide a separate small entity fee for qualified licensees. The remaining nine states do not identify small entities in their fee structure and therefore assess the same fee to all licensees regardless of their size.

Increases in the materials license fees since 1991 for the eleven Agreement States selected ranged from 10 percent in New York to 218 percent in Utah (see Table 1). Of particular note are the increases in the States of Washington, Georgia, and Utah. Washington and Utah

are two of the original states benchmarked in 1991. Georgia and Washington are the two Agreement States reviewed that have a separate annual fee for small entities.

The structure of the total fees per year in Georgia is similar to that used to determine the total fees paid by NRC small entity licensees in 1991. In Georgia, this fee increased by 64 percent from 1991 to 1999. The increase in Georgia is directly comparable to the NRC context since Georgia uses the same two-tier structure for its small entity annual fees.

Washington's maximum fee assessed to small entities increased by 25 percent, from approximately $3,800 in 1991 to approximately $4,700 in 1999. The $4,700 fee is charged for an Industrial Radiography license. Washington had the highest maximum fee in 1991 and it was this fee that provided the basis for the maximum fees assessed to NRC small entity licensees.

Utah had the lowest maximum fee of the six benchmark states in 1991 . By 1999, Utah's maximum fee had increased by 218 percent, from $440 to $1,400. As in Washington, the maximum fee is charged for an Industrial Radiography license.

Table 1 shows the increases in the maximum total fees paid by small entities in the selected Agreement States from 1991 to 1999. Data is not presented in the Table for the State of California because California does not use fee categories that are directly mapped to NRC fee categories. California charges a base fee plus a fee based on the number of millicuries handled. In addition, because the FY 1991 fees for the State of Maryland were not available, only the maximum fee for FY 1999 is shown in the Table. The change in the maximum fee paid by NRC small entity licensees over the same period is included for purposes of comparison. This fee

decreased by 47 percent while fees in the Agreement States were increasing. The reason for this decrease is discussed in B. below.

Table 1

Percentage Change in the Maximum Total Fee Assessed to Small Entities Annually			
State	Maximum Fee 1991	Maximum Fee 1999	Percent Change
Utah	$ 440	$1,400	218%
Nebraska	$1,456	$2,925	101%
Texas	$2,100	$4,230	101%
Tennessee	$2,000	$4,000	100%
Georgia	$1,650	$2,700	64%
Florida	$1,925	$2,657	38%
Illinois	$2,000	$2,733	37%
Washington	$3,760	$4,699	25%
New York	$1,000	$1,100	10%
Maryland	Not available	$1,350	Not available
NRC Small Entity	$3,400	$1,800	(-47%)

The increases in the fees assessed to small entities in Agreement States between 1991 and 1999 suggest that the cost to support radioactive materials licensees has increased over time. Because small entities in Agreement States are currently paying the increased fees, it can be inferred that the fees do not have a significant impact on them.

B. Analysis of Changes in the NRC Small Entity Fee Structure

When NRC established its small entity annual fee in 1991, the fee was viewed as one component of the total annual costs that would be assessed to small entities. Table 2 presents the composition of the 1991 total annual cost for small entities.

Table 2

Total Fees Assessed to NRC Small Entities in 1991							
Fees	Selected Fee Categories						
	7A Teletherapy	7C Nuclear Medicine	3M Research & Development	3N Services	3O Industrial Radiography	3P Gauges	5A Well Logging
Annualized Inspection Fee[1]	$ 920	$ 420	$ 200	$140	$ 920	$180	$ 210
Amendment Fee[2]	$ 340	$ 340	$ 630	$320	$ 390	$300	$ 430
Annualized Renewal Fee[3]	$ 130	$ 170	$ 40	$130	$ 280	$ 80	$ 320
Subtotal	$ 1,390	$ 930	$ 870	$590	$ 1,590	$560	$ 960
Annual Fee for Small Entity	$ 1,800	1,800	$ 1,800	$1,800	$ 1,800	$1,500[4]	$1,800
Total Fees (Rounded)	$ 3,200	$2,700	$ 2,700	$2,400	$ 3,400	$2,100	$ 2,800

[1] NRC charged a separate fee for inspections under Part 170. The inspection frequency, defined as years between inspections, varies with each category of license. To annualize the inspection fee, the fee charged per inspection was divided by the inspection frequency.

[2] NRC charged a fee for each amendment to a license. In determining the total annual cost, one amendment per year was assumed.

[3] In 1991 NRC issued materials licenses for a five-year period. At the end of this period each licensee paid a fee under Part 170 to renew the license. Because the licensee paid this fee once every five years, in calculating the total annual cost, the renewal fee was annualized by dividing by five.

[4] The FY 1991 annual fee of $1,500 for category 3P was less than the $1,800 small entity annual fee. Therefore, small entities in this category paid the $1,500 annual fee, not $1,800.

Since 1991, NRC's Part 170 inspection, renewal, and amendment fees for materials licenses have been eliminated and the costs of those services included in the annual fee. Although the annual fee now covers the costs for inspections, renewals, and amendments, the small entity fee itself remained unchanged. As a result, the maximum NRC fees paid by small entities has declined by 47 percent, from $3,400 in 1991 to $1,800 in 1999. This decrease occurred while the average total non-small entity annual fee for other NRC materials licenses increased by 25 percent and the average maximum annual fee for small entity licensees in Agreement States increased by 54 percent.

Table 3 compares the total fees (annual, inspection, renewal, and amendment) assessed to NRC materials licensees in 1991 with the total fees (annual) assessed to these licensees in 1999. In five of the seven categories the fee increases were over 20 percent. Of particular note are the increases in categories 7C-Nuclear Medicine, 3O-Industrial Radiography, and 3P-

Gauges. These categories contain 67 percent of the small entity licenses invoiced for FY1999. The average fee increase for these three categories is 31 percent, compared to the 25 percent average for the seven categories reviewed.

Table 3

Comparison between Total NRC Annual Fees for Selected Categories for 1991 and 1999								
NRC Fees	7A Teletherapy	7C Nuclear Medicine	3M Research & Development	3N Services	3O Industrial Radiography	3P Gauges	5A Well Logging	Average
1991 Annual Fee	$ 9,700	$ 3,500	$ 4,000	$ 4,400	$ 9,300	$1,500	$7,000	$ 5,600
1991 Other Fees:								
Annualized Inspection Fee	$ 920	$ 420	$ 200	$ 140	$ 920	$ 180	$ 200	
Amendment Fee	$ 340	$ 340	$ 630	$ 320	$ 390	$ 300	$ 430	
Annualized Renewal Fee	$ 130	$ 170	$ 40	$ 130	$ 280	$ 80	$ 320	
Total Other Fees	$ 1,390	$ 930	$ 870	$ 590	$ 1,590	$ 560	$ 950	
Total Fee in 1991 (Rounded)	$11,100	$ 4,400	$ 4,900	$ 5,000	$ 10,900	$2,100	$ 8,000	$6,700
Total (Annual) Fee in 1999	$15,300	$ 5,800	$ 5,000	$ 5,200	$ 14,700	$2,600	$ 9,900	$8,400
Fee Increase from 1991 to 1999	38%	32%	2%	4%	35%	24%	24%	25%

Table 4 compares the 1991 fees for amendments and inspections with the cost to provide these services in 1999. The cost was determined by multiplying the average hours to complete amendments and inspections by the hourly rate. The 1999 cost for amendments is on average 60 percent higher than the amendment fee assessed in 1991; inspection costs are 260 percent higher. These services are provided to all licensees, both small entities and non-small entities. However, under the current fee structure these costs are recovered only from annual fees assessed to non-small entities. Because the small entity annual fee has remained static, it does not reflect any increases in NRC's costs since 1991.

Table 4

Comparison of NRC Inspection and Amendment Costs in 1991 and 1999						
	Amendments			Inspections		
	1991	1999	Increase	1991	1999	Increase
7A-Teletherapy	$ 340	$ 450	32%	$ 920	$3,200	248%
7C-Nuclear Medicine	$ 340	$ 520	53%	$ 830	$ 3,100	273%
3M-Research & Development	$ 630	$ 710	13%	$ 800	$ 2,300	188%
3N-Services	$ 320	$ 690	116%	$ 550	$2,700	391%
3O-Industrial Radiography	$ 390	$ 780	100%	$ 920	$3,300	259%
3P-Gauges	$ 300	$ 390	30%	$ 920	$ 2,200	139%
5A-Well Logging	$ 430	$ 950	121%	$ 640	$2,700	322%
Average	$ 400	$ 640	60%	$ 800	$ 2,900	263%

Given NRC's 100 percent cost recovery requirement, the portion of annual fees not recovered from small entities is passed to other NRC licensees. The increasing disparity between the small entity fee and the cost of NRC services included in the annual fee calls for a more equitable distribution of the NRC costs to these licensees. An increase in the small entity fee would mitigate the cost differences and would permit small entities to assume a greater portion of NRC costs attributable to them. If everything else remains the same, an increase in the small entity fee would result in a decrease in the small entity subsidy paid by other licensees.

C. Analysis of Increases in the Consumer Price Index

On a national level the cost of goods and services increased between 1991 and 1999. According to the U.S. Department of Labor, Bureau of Labor Statistics, the Consumer Price Index

(CPI) increased 28.8 points, from 136.2 in 1991 to 165.0 for the first half of 1999, an increase of 21 percent. This index is an accepted economic indicator of price changes in the US economy. The 21 percent increase in the CPI is evidence that costs in NRC's external environment have increased. Obviously, NRC's cost of providing services to its licensees will be impacted by these increases.

D. Alternatives for Revising the Maximum Annual Fee

1. Increase small entity fees using the 1991 methodology.

Following the reasoning used in the 1991 process, the maximum annual fee for small entities could be revised to reflect the current maximum fees charged by Agreement States and the changes in the NRC fee structure since 1991. The maximum Agreement State fee assessed to small entities in 1999 is $4,700. Therefore, the maximum value for NRC's small entity fee could be set at $4,700.

This method would allow the NRC to recover from small entities 48 percent of the total amount of the small entity annual fee invoices. Although this method is defensible, because it is based on sound reasoning used in the original establishment of the small entity fees that have been in place since 1991, it is based on an external fee that is outside NRC' s direct control.

2. Increase the small entity fee using the average increase in NRC materials license fees from 1991 to 1999.

From 1991 to 1999 total NRC fees for materials licenses increased, on average, by 25 percent. This percentage could be applied to the existing small entity fee to give a new small entity fee of $2,300.

This method is a simple and obvious means of applying the rates of increase in NRC fees since FY 1991 to the small entity fees. This method does not consider the changes to the total fees paid by small entities since FY 1991 and does not incorporate changes in the composition of the total fees assessed to small entities per year by Agreement States. However, it does rely on the increases to the total fees paid by other NRC materials licensees since FY 1991. This method could also provide a sustainable and simple means of determining whether NRC's small entity fees should be revised in the future.

3. Add the 1991 amendment, renewal, and inspection costs to the existing small entity fee and increase the sum by the average increase in NRC materials license fees from 1991 to 1999.

The small entity fee could be increased by loading the existing small entity annual fee of $1,800 with the amendment, renewal, and inspection costs used in 1991 and increasing the total by 25 percent. This method not only incorporates the average increase in NRC fees but it bases the increase on the total annual costs that were assessed to small entities in 1991.

To revise the small entity fee using this method, a category must be selected as the 1991 base. The total annual cost for this category, as presented in Table 3, will then be increased by the NRC average of 25 percent. Five possible approaches to selecting the 1991 base were explored.

Method 3A - Maximum Fee Category in the Benchmark States

Method 3A uses the Industrial Radiography category as the base. This category had the maximum fee in the Agreement States benchmarked in 1991. The total NRC fee assessed to the Industrial Radiography category in 1991 was $3,400. Increasing this fee by 25 percent gives a new small entity fee of $4,300.

Method 3B-Highest Number of Small Entities Present

Method 3B uses the fee category with the highest number of small entities. In FY1999, Category 3P, Gauges and Other Industrial Uses, had 30 percent of all NRC small entity licensees. This was the highest number of small entities present in a single category. In 1991, the total fees for Category 3P was $2,100. A 25 percent increase in this fee would set the small entity fee at $2,600.

Method 3C-Highest Number of Upper Tier Small Entities Present

Method 3C uses Category 7C, Nuclear Medicine as the base. This category has the highest number of upper tier small entities and is considered a viable base because the small entity annual fee originally established in FY 1991 was the upper tier fee. In 1991, Category 7C had a total fee of $2,700; this base would give a new small entity fee of $3,400.

Method 3A yields a 45 percent recovery of the invoiced amounts from small entities, the highest recovery rate under Method 3. However, the Industrial Radiography category contains

only 7 percent of all NRC small entity licensees in 1999 and arguably does not affect a significant number of the small entities. Method 3B addresses this issue and uses Category 3P, the category with the highest number of small entities. However, the 3P Category also has the lowest 1991 total cost and results in a recovery rate of 34 percent from small entities, the lowest under Method 3. Method 3C uses Category 7C, Nuclear Medicine, and is preferable to both Methods 3A and 3B in that it yields a 37 percent recovery rate from small entities *and* contains 30 percent of the small entity licensees.

Methods 3A, 3B and 3C are all based on the selection of a single fee category as the 1991 base. Using the fee from a specific fee category as the base fee can implicitly make the category a benchmark. This increases the risk of challenges to the fee if significant changes occur in the benchmark category.

Method 3D - Weighted average of the total fees in the seven categories

Method 3D uses the number of upper tier small entities in each category to weight the total fee assessed to each category in 1991. The weighted-average of $2,700 is then used as the base. This gives a new small entity fee of $3,400.

Method 3E- Average of the total fees for the seven categories

Method 3E uses the average total fee for the categories reviewed as the base fee. The average total fee of $2,800 is then increased by 25 percent to give a new small entity fee of $3,500.

Both Methods 3D and 3E use averages to determine the base fee and this reduces the risks associated with Methods 3A, 3B and 3C. Both methods yield the same recovery rate of 37 percent and can be considered equally acceptable from a monetary perspective.

Because Method 3D uses a weighted average, the number of small entities in each of the seven categories are factored into the selection process while smoothing the impact of the highest and lowest fee categories.

While Methods 3D and 3E would consider the total fees paid by small entities in FY 1991 and would increase the amounts recovered from small entities thereby reducing the small entity subsidy paid by other licensees, the percentage increase under either of these methods would be larger than the average percentage increase in the total fees assessed to other NRC materials licensees since FY 1991.

IV Conclusion.

Based on the results of the reanalysis, the NRC is proposing to increase the maximum small entity annual fee by 25 percent, based on the percentage increase since FY 1991 in the average total fees paid per year by other NRC materials licensees. As a result, the maximum small entity annual fee would increase from $1,800 to $2,300. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the proposed maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the NRC would continue to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts. The lower-tier small entity fee also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. The NRC is proposing to increase the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase would result in the lower tier small entity fee increasing from $400 to $500.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined. As part of the re-examination, the NRC will consider the percentage increase in fees paid by other NRC materials licensees since the last rebaselining to determine if the maximum small entity annual fees should be revised.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

V. Summary.

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means

of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA.

ATTACHMENT 1 TO APPENDIX A

U. S. Nuclear Regulatory Commission

Small Entity Compliance Guide

Fiscal Year 2000

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires the NRC to collect approximately 100 percent of its budget authority each year through fees. This rule is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees comply with the FY 2000 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2000 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. **Small business** - a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. **Manufacturing industry** - a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. **Small organization** - a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. **Small governmental jurisdiction** - a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. **Small educational institution** - an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer labors.[1]

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[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The NRC is proposing to increase these fees by 25 percent. The proposed fees are as follows:

Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts)	Maximum Annual Fee Per Licensed Category
$350,000 to $5 million	$2,300
Less than $350,000	$500
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	$2,300
Less than 35 employees	$500
Small Governmental Jurisdictions	

(Including publicly supported educational institutions) (Population)	
20,000 to 50,000	$2,300
Less than 20,000	$500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	
35 to 500 employees	$2,300
Less than 35 employees	$500

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.
2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

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

d. Check the appropriate size standard 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. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(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.

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 $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. 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 $1150 or $250 for each fee category billed instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year 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 NRC Form 526,

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 at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

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