



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

March 6, 2000

MEMORANDUM TO: Glenda Jackson
Office of the Chief Financial Officer

FROM: David L. Meyer, Chief *D. L. Meyer*
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: REVIEW OF THE PROPOSED FY 2000 FEE RULE

The Rules and Directives Branch has reviewed the proposed rule that would establish the licensing, inspection, and annual fees necessary to recovery approximately 100 percent of the NRC's operating budget for FY 2000. We have attached a marked copy of the package that presents our comments.

If you have any questions concerning this matter, please contact David L. Meyer, Chief, Rules and Directives Branch, ADM, at 415-1762 (DLM1) or Michael T. Lesar, ADM, at 415-7163 (MTL).

Attachment: As stated

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RULES & ADMINISTRATION
US NRC

[7590-01-P]

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.

Insert date

DATES: The comment period expires (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

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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 through the NRC home page (<http://www.nrc.gov>). ^{Ruleforum. Inc.} From the NRC home page, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum". 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. ^A

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. Comments received may also be viewed and downloaded electronically via the interactive rulemaking web site established by the NRC for this rulemaking.

Insert 2A

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.

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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 pdrc@nrc.gov.



SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Proposed Action.
- III. Plain Language.
- ✓ ~~IV.~~ Environmental Impact: Categorical Exclusion.
- ✓ ~~V.~~ Paperwork Reduction Act Statement.
- ✓ ~~VI.~~ Regulatory Analysis.
- ✓ ~~VII.~~ Regulatory Flexibility Analysis.
- ✓ ~~VIII.~~ Backfit Analysis.

IV. Voluntary Consensus Standards ✓

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 individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the

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. The estimate for FY 2000 reflects an anticipated \$2.4 million increase in collections for Part 170 fees, from \$103.5 in FY 1999 to \$105.9 in FY 2000. The increase in Part 170 estimates 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. However, there was a \$4.1 million carryover from additional collections in FY 1998 which reduced the total fee recovery amount for FY 1999. There are no additional collections from FY 1999 to reduce the FY 2000 fee recovery amount. The \$1.7 net decrease for FY 2000 is the difference between the \$4.1 million reduction available in FY 1999 from FY 1998 collections and the \$2.4 million additional Part 170 collections estimated for FY 2000.

in fees recovered through Part 170 charges

In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately \$5.7 million for FY 2000 bills that will not be paid in FY 2000, for the small entity subsidy, and for 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 \$2.6 million more than in FY 1999.

As a result of reducing the \$447 million total amount to be recovered for FY 2000 by the \$106.0 million estimated collections for Part 170 fees and other receipts, and adding the \$5.7 million billing adjustment for FY 2000, the amount to be recovered in FY 2000 through the 10 CFR Part 171 annual fees is approximately \$346.7 million. This is ^{or decrease of} approximately \$1.6 million more than in ^{CR} FY 1999.

Amount from

In addition to the \$1.6 million increase in the amount ^{(to} ~~the~~ be recovered through annual fees, 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. Because this is a slight increase, after 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:

<u>Class of Licensees</u>	<u>FY 1999 Annual Fee</u>	<u>FY 2000 Proposed Annual Fee</u>
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	3,281,000	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
<u>Typical Materials Licenses</u>		

Radiographers	14,700	14,900
Well Loggers	9,900	10,100
Gauge Users	2,600	2,600
Broad Scope Medical	27,800	28,100

Because the final FY 2000 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 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 upon publication of the FY 2000 final rule to reactors and major fuel cycle facilities. 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 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 whose license anniversary date falls on or after the effective date of the final FY 2000 final 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.

The NRC announced in FY 1998 that as a cost-saving measure, it planned to discontinue mailing the final rule to all licensees. The NRC made a one-time exception to this practice in FY 1999 because the FY 1999 proposed rule requested comments on two potential annual fee schedules—one with full rebaselined annual fees, and the second with a 50 percent cap on rebaselined annual fees. Because the NRC is seeking comment on a single proposed annual fee schedule for FY 2000, the agency does not plan to mail the FY 2000 final rule, or future final rules, to all licensees, but will send the final rule to any licensee or other person upon request.

How is the NRC

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 §171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §171.16. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

3. 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 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

4 Fees collected for identifiable search under Part 170 in the

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. ~~On the other hand,~~ ^{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 concerns with implementing cost recovery under Part 170 for these activities, 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:

1. Revise the two 10 CFR Part 170 hourly rates; and
2. Revise the licensing fees assessed under 10 CFR Part 170 to reflect the revised hourly rates.

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.

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 31445; Jun. 10, 1999) the Commission stated 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 every three years, or earlier if warranted.

As indicated in the FY 1999 final rule, because 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 fees by the percent change in the NRC's total budget, with adjustments for the numbers of licensees paying fees, changes in Part 170 estimated collections, and other adjustments 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 receipts, compared to \$107.7 million in FY 1999. The increase in Part 170 estimates from FY 1999 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 FY 1999 amount to be recovered through annual fees was also reduced by a \$4.1 million carryover from FY 1998 payments, ~~there~~ there is not a similar carryover from FY 1999 to reduce the amount to be recovered through annual fees for FY 2000. The \$2.4 increase in estimated Part 170 collections coupled with the fact that there is no carryover from FY 1999 to add to the FY 2000 estimated offsetting receipts, results in a \$1.7 net decrease in offsetting receipts for FY 2000 compared to FY 1999.

In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately \$5.7 million for FY 2000 bills that will not be paid in FY 2000, for the small entity subsidy, and for 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 \$2.6 million more than in FY 1999.

Subtracting the \$106.0 million estimated 10 CFR Part 170 fee collections and other receipts from the \$447.0 million total amount to be recovered for FY 2000, and adding the \$5.7 million for the FY 2000 billing adjustment, leaves approximately \$346.8 to be recovered in FY 2000 through the 10 CFR Part 171 annual fees. This is approximately \$1.7 million more than in FY 1999.

In addition to the \$1.7 million increase in the amount to be recovered through annual fees, 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

Part 171 Billing Adjustment¹

Small Entity Allowance	5.30	5.60
Estimated Unpaid Current FY Part 171 Invoices	3.40	3.30
Estimated Payments from Prior Year Invoices	<u>-5.60</u>	<u>-3.20</u>
Subtotal	<u>3.10</u>	<u>5.70</u>
Total Part 171 Billing	\$345.10	\$346.70

¹These 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.

Because the final FY 2000 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 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 upon publication of the FY 2000 final rule to reactors and major fuel cycle licensees whose FY 2000 annual fee is \$100,000 or more. 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 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 whose license anniversary date falls on or after the effective date of the final FY 2000 final rule would be billed at the FY 1999 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

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.

3. Administrative Amendments.

a. The NRC is proposing to revise § 171.5, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates of Compliance pursuant to Part 76 to the United States Enrichment Corporation for the operation of the two 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 clarify the application of Part 171 annual fees to these Certificates.

b. Section 171.15 would be revised as follows:

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 its decision of 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). These decisions of the Court enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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). The 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 Public Law 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 accomplish this statutory requirement, the NRC, in accordance with §171.13, 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 and the Conference Committee Report specifically state 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).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VIII
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.



VIII. 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

§171.3 Definitions.

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

7. §171.15 is revised to read as follows:

§171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

(b) ~~X~~ 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 1.39 percent. *P(1)* [In the FY 1999 final rule, the NRC stated that it would continue the policy to stabilize fees by adjusting the annual fees only by the percent change in 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. 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)~~(X)~~ of this section. ^[IP(2)] 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)(X)~~ 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 1.39 percent. The FY 1999 annual fee was comprised of a base spent fuel storage/reactor

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decommissioning annual fee (which is also included in the operating power reactor annual fee show in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown in paragraph (d)~~(X)~~ of this section. ^{PP(2)} [The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

ⁱ
(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)~~(X)~~ The activities comprising the FY 1999 surcharge are as follows: ✓

¹) (i) Low level waste disposal generic activities;

²) (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

³) (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 and 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 1.39 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

8. ~~Section~~ ^{In} §171.16 [↑] is ^{revised} to read as follows: *paragraphs (c), (d), and (e) are ✓*

§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.

* * * * *

(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 for 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

Maximum Annual Fee

(b) Annual fees in the amount of \$100,000 or more and described in the Federal Register *document* notice 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 ~~prior to~~ *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.

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 other adjustments 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 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. Because 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, the

Based on FY 1999
annual fees. ✓

NRC's proposed FY 2000 annual fees have been determined by the percent change method. 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 ~~competitive~~ extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and 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 unmitigated cost of the rule 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 annual fee in 1991. ~~Since~~ ^{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 would be 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 1991 fee structure for inspections, amendments and renewals, a small entity annual fee of \$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 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 ~~by~~ ^{the} NRC ^{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 to these increases, the structure of the fees that NRC charges to its materials licensees changed during the ^{period} 1991-1999 ^{and} period. 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 1200 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

(Review of 1999)

The analysis included a review of the fee structures in Agreement States to determine what fees they currently assess ~~to~~ 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 ~~as well as five~~ other Agreement States with the highest number of licenses. *4000*

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} presence 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 contain 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 assess the same fee to all licensees.

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. 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 \$3,800 in 1991 to \$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.

In 1991 Utah had the lowest maximum fee of the six benchmark states. 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. 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	Maximum Fee	Percent Change
	1991	1999	
California	N/A	N/A	N/A
Texas	\$2,100	\$4,230	101%
New York	\$1,000	\$1,100	10%
Florida	\$1,925	\$2,657	38%
Illinois	\$2,000	\$2,733	37%
Tennessee	\$2,000	\$4,000	100%

Maryland	N/A	\$1,350	N/A
Georgia	\$1,650	\$2,700	64%
Washington	\$3,760	\$4,699	25%
Utah	\$ 440	\$1,400	218%
Nebraska	\$1,456	\$2,925	101%
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 over time the cost to support radioactive materials licensees increased.

Since 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.

Became

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	7C	3M	3N	3O	3P	5A
		Teletherapy	Nuclear Medicine	Research & Development	Services	Industrial Radiography	Gauges

Annualized	\$ 920	\$ 420	\$ 200	\$140	\$ 20	\$180	\$ 210
Inspection Fee ¹							
Amendment	\$ 340	\$ 340	\$ 630	\$320	\$ 390	\$300	\$ 430
Fee ²							
Annualized	\$ 130	\$ 170	\$ 40	\$130	\$ 280	\$ 80	\$ 320
Renewal Fee ³							
Subtotal	\$ 1,390	\$ 920	\$ 870	\$590	\$ 1,590	\$560	\$ 960
Annual Fee for	\$ 1,800	1,800	\$ 1,800	\$1,800	\$ 1,800	\$1,500 ⁴	
Small Entity							
Total Fees	\$ 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. ~~Since~~ ^{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 3 ^{1#} 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, five percent above the average for the seven categories reviewed.

Table 3

Comparison between Total NRC Annual Fees for Selected Categories for 1991 and 1999								
NRC Fees	7A Tetherapy	7C Nuclear Medicine	3M Research & Development	3N Services	3O Industrial Radiography	3P Gauges	5A Well Logging	Average
Annual Fee	\$ 9,700	\$ 3,500	\$ 4,000	\$ 4,400	\$ 9,300	\$1,500	\$7,000	\$ 5,600
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	\$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	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 1999¹. 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. Since 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%

For each category, the cost to provide amendments and inspections was determined by multiplying the hourly rate by the average hours to complete amendments and inspections respectively.

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 require small entities to assume a greater portion of NRC costs attributable to them. If all 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

Handwritten notes:) *Analysis* ✓

On a national level the cost of goods and services increased between 1991 and 1999. The Consumer Price Index (CPI) increased 28.8 points, from 136.2 in 1991 to 165.0 for the first half of 1999², 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. ~~It is intuitively apparent that~~ NRC's cost to provide services to its licensees will be impacted by these increases.

Handwritten notes: Obviously, of (ing) ✓

D. Alternatives for Revising the Maximum Annual Fee

Handwritten notes: } *General*

1. Increase small entity fees using the 1991 methodology

²U.S. Department of Labor, Bureau of Labor Statistics

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. To make the revision, the equation³ governing the small entity fees needs to be updated to reflect the changes discussed in B above.

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 since it is based on the original reasoning used in the 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. *(because)*

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

From 1991 to 1999 *(NRC total fees)* NRC total 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

³Small Entity Fee + Inspection Fee + Amendment Fees + Renewal Fee ≤ maximum Agreement State fee

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 will be 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

P 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

P 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} since the upper tier fee is the focus of this study. In 1991, Category 7C had a total fee of \$2,700; this base would give a new small entity fee of \$3,400. ✓

P 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.

P 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)

P 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)

P Method 3E uses the average total fee for the categories in the study population 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. ✓

P 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. ✓

P

Since 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 percentage increases 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.

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 is continuing 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.

The NRC plans to re-examine the small entity fees each year that annual fees are rebaselined, using the percentage increase in fees paid by other NRC materials licensees to determine if the maximum annual small entity 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.

IV 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



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 employees ← ↴

↴ 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.