



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

March 9, 2000

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

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

SUBJECT: OFFICE CONCURRENCE ON THE PROPOSED FY 2000 FEE RULE

The Office of Administration concurs, subject to the comments provided, on 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 additional comments.

The statement of considerations references the December 14, 1999, Office of the Inspector General Audit Report on the license fee development process and indicates, with no additional discussion, that the Commission considered the report in developing the proposed rule. We recommend that, at a minimum, a discussion be included that summarizes the recommendations made in the report, indicates explicitly how the proposed rule or the process used in developing the proposed rule has changed as a result of these recommendations, and describes any additional initiatives the NRC is taking as a result of this report.

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

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-

The NRC also estimates a net adjustment for FY 2000 of approximately \$5.7 million for the small entity subsidy, for FY 2000 bills that would not be paid in FY 2000, and for payments received in FY 2000 for FY 1999 invoices. This is approximately \$1.6[#] 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:

<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
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Typical Materials Licenses

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

This proposed rule is based on the current OBRA-90 100 percent fee recovery requirement. 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.

In developing this proposed rule, the Commission considered the NRC Office of the Inspector General Audit Report dated December 14, 1999, entitled "NRC'S LICENSE FEE DEVELOPMENT PROCESS NEEDS IMPROVEMENT."

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. As a matter of courtesy, the NRC plans to continue to mail the proposed fee rules to all licensees.

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:

Subtotal	\$255.3M	\$72.2M
Less offsetting receipts	<u>- .1M</u>	<u>-----</u>
Total Budget Included in Hourly Rate	\$255.2M	\$72.2M
Program Direct FTEs	997.6	285.0
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 ^o above, dividing the \$255.2 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (997.6) 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 (285.0) 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).

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

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 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.

After evaluating NRC's budget data for FY 2000 and concluding 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 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

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 changes ~~affected~~^(or) the annual fees are shown in Table II.

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TABLE II

Calculation of the Percentage Change to the FY 1999 Annual Fees

(Dollars in Millions)

	<u>FY 1999</u>	<u>FY 2000</u>
Total Budget	\$469.80	\$470.0
Less NWF	-17.00	-19.15
Less General Fund		
(Regulatory reviews, and other	<u>-3.20</u>	<u>-3.85</u>
assistance to other Federal agencies)		
Total Fee Base	\$449.60	\$447.00
Less Part 170 Fees	-103.50	-105.90
Less other receipts	<u>-4.10</u>	<u>-0.10</u>
Part 171 Fee Collections Required	\$342.00	\$341.00
 <u>Part 171 Billing Adjustment¹</u>		
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>

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.

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 specifically 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 definition 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, and USEC has been paying the 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.

annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in §171.11(a)(2).

(3) Paragraph (f) of §171.15 would be revised to change fiscal year date references.

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 continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, *most* licensees ~~with gross annual receipts of \$350,000 to \$5 million~~ *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 small entities ~~with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000.~~ *those licensees who are considered to be very*

(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 1.39 percent. After rounding, the FY 2000 annual fees for several categories of materials

with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000.

(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:

Materials Licenses

Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
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

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

In summary, the NRC is proposing to:

- P 1. Use the percent change method to determine annual fees for FY 2000. The FY 2000
11 { annual fee for each license fee category would be determined by increasing the FY ✓
1999 actual annual fee by 1.39 percent.
- P 2. Increase the maximum small entity annual fee from \$1,800 to \$2,300 and increase the ✓
11 { lower tier small entity fee from \$400 to \$500.

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

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). 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 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 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. Consistent with OBRA-90, as elaborated by the accompanying Conference Committee Report, the amendments 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).

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

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:

§170.12 Payment of Fees.

(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:

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

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 §171.3, the definition of the term *Materials License* is revised to read as follows:

§171.3 Definitions.

Fuel permits or licenses - generally are not

D *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. ✓

In *paragraphs (b), (c), (d)(i), and (e)*
8. §171.15 is revised to read as follows: ✓

§171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning ①

(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) ~~A~~ 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) ~~A~~ 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:

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 part 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

	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 Part 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

(1) LLW disposal generic activities;

(2) ~~A~~ 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) ~~A~~ 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:

§171.19 Payment.

(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} ~~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 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

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 on the 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

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.

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

✓ 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 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.

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