

obc comment 3/4
4:00

(1) let's include statement or proposal ✓

(2) legislative and reference to audit report taken into account ✓ [7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG50

~~(B) What consultation have we had with the SBA of this small entity fee rule, phrase.~~

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 (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

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.

I. Background

OBRA-90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy (DOE) and other Federal agencies were excluded from the fee recovery requirement for FY 2000 by the FY 2000 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing *special*  individually identifiable ^{switch} 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

benefits to identifiable. 3

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.

confusing

Why is this needed

if needed, this data should be in a table.

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 approximately \$1.6 million more than in FY 1999.

to

In addition to the \$1.6 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 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:

change
1 copy
62

<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

Typical Materials Licenses

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

Therefore
 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. *occasionally* 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. ✓

June?

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 May 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:

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

The NRC is proposing two major amendments to 10 CFR Part 170; These amendments would not change the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the IOAA recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives. {NOTE TO OGC: Can/should this be deleted??}

Why say this? what does it get us?
not legally required but might not be bad idea to include

are pertains to

The major changes to 10 CFR Part 170 proposed by the NRC are in hourly rates and fee adjustments.

to

to slightly increase the hourly rate used to calculate fees and to adjust fees based on the new normal hourly rate

1. Hourly Rates.

spell out?

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

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

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

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

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

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

	Reactor Materials <u>Program</u>	<u>Program</u>
Direct Program Salaries & Benefits	\$103.3m	\$29.0m
Overhead Salaries & Benefits, Program Travel and Other Support	\$ 53.2m	\$15.3m
Allocated Agency Management and Support	<u>\$ 98.8m</u>	<u>\$27.9m</u>
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

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.

Legal and policy

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.

The NRC proposes two major amendments to 10 CFR Part 171 and several administrative amendments to update information in certain sections and to incorporate the major proposed changes.

The major changes to 10 CFR Part 171 proposed by the NRC are:

1. Annual Fees.

The NRC proposes to amend §§171.15 and 171.16 to revise the annual fees for FY 2000 to recover approximately 100 percent of the FY 2000 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be recalculated (June 20, 1995; 60 FR 32225). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

In the FY 1999 proposed fee rule (April 1, 1999; 63 FR 15884), the Commission solicited public comment on whether the Commission should, in future years, continue to use the percent change method and rebaseline annual fees every several years, as established in FY 1995, or

return to a policy of rebaselining annual fees every year. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years as warranted. Based on the comments received, licensees have continuing concerns about fee stability. Therefore, in the final FY 1999 fee rule, 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.

after evaluating NRC's budget data part FY 2000 and concluding

~~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 *correcting* adjustments for the numbers of licensees paying fees, *current* changes in Part 170 estimated collections, and other adjustments required to assure that the amounts billed result in the required collections.

redundant and confusing

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 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.

do we need?
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

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. The NRC notes that this increase is less than the _____ percent inflation factor used by the Office of Management and Budget for the FY 2000 budget. 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.

✓
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Table II shows the total budget and amounts of fees for FY 1999 and FY 2000.

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

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.

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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.

✓

relevant

The workpapers which support this proposed rule show in detail how the fees are calculated. The workpapers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001. ✓

2. Small Entity Annual Fees.

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

Between 1991 and 1999, changes in both the external and internal environment have *affected* impacted on NRC's cost 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 1991-1999 period. Costs for materials license inspections, renewals, and amendments, which were *in the past* previously recovered through Part 170 fees for services, *there are* 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. — ✓

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 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 ^{is} proposed ^{as} change is an administrative change to ^{codify the agency's practice} clarify the application of Part 171 annual fees to these Certificates. *The USEC has been paying* ✓

annual fees since

b. Section 171.15 would be revised as follows:

(1) Paragraph (b) of §171.15 would be revised in its 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. Fiscal year references would be changed from FY 1999 to FY 2000. The fees would be established by increasing the FY 1999 actual (prior to rounding) annual fees by 1.39 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, with additional *modulation* 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 activities comprising the FY 1999 base annual fees and the additional charge (surcharge) are listed in §171.15(b) and (c) for convenience purposes.

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

(2) Paragraph (e) of §171.15 would be revised to establish the FY 2000 annual fee for non-power (test and research) reactors. The fee would be established by increasing the FY 1999 actual (prior to rounding) annual fee by 1.39 percent. Each non-power reactor would pay an annual fee of \$87,100 in FY 2000. The NRC would continue to grant exemptions from the

Part 71 - Transportation

\$2,300 to \$67,600

of Radioactive Material

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

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(3) Footnote 1 of §171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1999, and permanently ceased licensed activities entirely by September 30, 1999. All other licensees and approval holders who held a license or approval on October 1, 1999, would be subject to the FY 2000 annual fees.

Holders of new licenses issued during FY 2000 would be subject to a prorated annual fee in accordance with the current proration provision of §171.17. For example, those new materials licenses issued during the period October 1, 1999, through March 31, 2000, would be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 2000, would not be assessed an annual fee for FY 2000. Thereafter, the full annual fee would be due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 2000 before the effective date of the FY 2000 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 2000 final rule would be billed at the FY 2000 revised rates during the anniversary month of their license. Payment would be due on the date of the invoice.

Can we delete?
OK
is there a better way to express this that doesn't make it seem overdue upon receipt?
✓

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

In summary, the NRC is proposing to:

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

✓

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 Courts, ^{legal} ~~principles~~ ^{principles} ~~enabling~~ the Commission to develop fee guidelines ^{were developed based on these legal decisions} that are still used for cost recovery and fee development purposes, ✓
OK

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-- ok

(1) ^t 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;



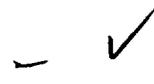
(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;



(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 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-

Computed with
as elaborately as necessary
the amendment?
provide



(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;

*Can't attribute precisely data - adjust original
OBR-90*

(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).

methodology

Why does this add?

VII. Regulatory Flexibility Analysis

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)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

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

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

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

(i) Low level waste disposal generic activities; ✓

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

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

(d) The FY 2000 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 2000 annual fees, which must be collected by September 30, 1999, have been determined by adjusting the FY 1999 actual (prior to rounding) annual fees upward by 1.39 percent. As a result of rounding, the FY 2000 annual fee for several fee categories is the same as the FY 1999 annual fee. In the FY 1999 a final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170, the number of licensees paying the fees, and other required adjustments. The FY 1999 annual fees were comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown for convenience in paragraph (e) of this section.

**SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC**

(See footnotes at end of table)

Category of materials licenses

Annual Fees^{1, 2, 3}

1. Special nuclear material:

A.(1) Licenses for possession and use of
U-235 or plutonium for fuel fabrication
activities.

(a) Strategic Special Nuclear

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

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

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

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

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

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

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

(1) LLW disposal generic activities; 7,

(2) Activities not directly attributable to an existing NRC licensee or classes of licensees; ✓ ✓

e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) ^h 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. ✓

9. 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.

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

APPENDIX A TO THIS PROPOSED RULE --
DRAFT REGULATORY FLEXIBILITY ANALYSIS FOR THE
AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND
10 CFR PART 171 (ANNUAL FEES)

I. Background.

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

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

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

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

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

In FY 1995, the NRC announced that in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and ~~other adjustments~~ ^{led as otherwise} needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated. In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue the policy established in FY 1995 to adjust the annual fees by the percent change method, unless there ^{was} ~~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 ^{since FY 1999,}

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 ^{their} much larger competitors because the proposed fees would be the same for a two-person licensee ^{as} 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.

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 small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees ^{were considered} 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 on NRC's cost 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 1991-1999 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.

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.

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make more readable*

Table 1

N/A

Percentage Change in the Maximum Total Fee Assessed to Small Entities Annually			
State	Maximum Fee 1991	Maximum Fee 1999	Percent Change
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.

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.

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Table 2

N/A

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 Inspection Fee ¹	\$ 920	\$ 420	\$ 200	\$140	\$ 20	\$180	\$ 210
Amendment Fee ²	\$ 340	\$ 340	\$ 630	\$320	\$ 390	\$300	\$ 430
Annualized Renewal Fee ³	\$ 130	\$ 170	\$ 40	\$130	\$ 280	\$ 80	\$ 320
Subtotal	\$ 1,390	\$ 920	\$ 870	\$590	\$ 1,590	\$560	\$ 960
Annual Fee for Small Entity	\$ 1,800	1,800	\$ 1,800	\$1,800	\$ 1,800	\$1,500 ⁴	
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 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 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

Given NRC's 100 percent cost recovery requirement, the portion of annual fees not recovered from small entities is passed to other NRC licensees. The increasing disparity between the small entity fee and the cost of NRC services included in the annual fee calls for a more equitable distribution of the NRC costs to these licensees. An increase in the small entity fee would mitigate the cost differences and ^{would permit} require small entities to assume a greater portion of NRC costs attributable to them. ^{if other things remaining equal} 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. ✓
R

C. Analysis of Increases in the Consumer Price Index

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.

D. Alternatives for Revising the Maximum Annual Fee

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 ^{sound} 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. ✓

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

From 1991 to 1999 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

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.

Do not increase?

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.

Does the fee re-examination to rebaseline?

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

ATTACHMENT 1 TO APPENDIX A

U. S. Nuclear Regulatory Commission

Small Entity Compliance Guide

Fiscal Year 2000

- (3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.
- (4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$2,300 or \$500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the [?]prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$1150 or \$250 for each fee category billed instead of the full small entity annual fee of \$2,300 or \$500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526,