



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

May 23, 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 *David Meyer*
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON THE FINAL FY 2000 FEE RULE

The Office of Administration concurs on the final rule that establishes the licensing, inspection, and annual fees necessary to recover approximately 100 percent of the NRC's operating budget for FY 2000. We have attached a marked copy of the package that presents our comments.

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

Attachment: As stated

**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: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The 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). The amount to be recovered for FY 2000 is approximately \$447.0 million.

EFFECTIVE DATE: (Insert 60 days after publication in the Federal Register).

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555. Comments received may also be viewed via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For

information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov.

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

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

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Final Action.
- III. Response to Comments.
- IV. Voluntary Consensus Standards.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.

Classification (SIC) System establishes size standards based on types of economic activity or industry. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry.

II. Response to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to licensees and applicants for FY 2000 on March 27, 2000 (65 FR 16250). A total of 13 comments were received on the proposed rule. Many of the comments were similar in nature. These comments have been grouped, as appropriate, and addressed as single issues in this final rule. ✓

The comments are as follows:

A. Legal Issues.

1. NRC's Interpretations of OBRA-90 and IOAA

Comment. Several commenters again raised questions about the NRC's legal interpretations of OBRA-90 and the IOAA. For example, some commenters argued that OBRA-90 prohibits exemptions from Part 170 fees, and that accordingly the NRC must charge federal agencies, state agencies, and state licensees fees under Part 170 for specific services rendered.

Comment. One commenter complained that, in deriving the FY 2000 annual fees by simply escalating last year's fee by 1.4 percent, the NRC has not given "any consideration" to whether underlying costs have any rational connection to reactor regulation or any consideration of whether the total assessment is as fair and equitable as is feasible. The commenter also claims that the proposed rule fails to provide "any explanation and accounting of the expenses that are covered by this charge," and thus "denies the companies a meaningful opportunity to comment."

Another commenter indicated that, under the provisions of the Administrative Procedures Act, the NRC should provide detailed cost information associated with each component of reactor regulation and other generic costs. The commenter believes this would provide for more effective feedback and comment and would promote increased Commission efficiency because the costs of services and other agency expenses, such as overhead, would be more visible to stakeholders. The commenter also requested that NRC provide a more detailed account of major research contracts, their purpose, and their costs.

Response. The NRC believes there is nothing obscure about the 1.4 percent increase in annual fees or its relation to reactor regulation. The FY 2000 proposed rule clearly describes the calculation that leads to the 1.4 percent increase (65 FR 16251, 16253-4). This calculation is also repeated in this final rule. In addition, the proposed rule announced the availability of the agency's work papers that support these calculations. Furthermore, the NRC has made available in the Public Document Room NUREG-1100, Volume-15, "Budget Estimates and Performance Plan, Fiscal Year 2000 (February 1999)." This document discusses the NRC's

staffing levels are their lowest in 20 years. This has all been achieved while the NRC has expended large resources in extraordinary reform efforts, particularly in enforcement and power reactor oversight.

B. Specific Part 170 Issues.

1. Project Manager Billings Issues.

Comment. Uranium recovery industry commenters strongly opposed the NRC's current billing method for Project Managers (PMs). Many comments were directed towards the unfairness of certain types of PM activities being charged to licensees that had little or no apparent connection to the sites the PMs were managing. One commenter stated that indirect PM charges should be captured under Part 171 annual fees versus Part 170 fees due to the inequities of the NRC's current billing system, thereby allowing indirect PM charges to be evenly distributed to all uranium recovery licensees paying annual fees. Another concern was the unequal distribution of PMs to licensee sites, thereby subjecting certain licensees to a disproportionate share of indirect (e.g., administrative) PM costs.

Response. In FYs 1998 and 1999, the NRC shifted cost recovery for certain activities from Part 171 annual fees to Part 170 fees. As part of this effort, in FY 1999 the NRC made a conscientious decision to recover the full costs for PMs, with the exception of PM activities that are generic in nature (e.g., rulemaking and preparation of generic guidance documents, etc.) and leave time, through Part 170 fees. This decision is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and previous Commission guidance. In

implemented a revised policy requiring that future annual fees be rebaselined every three years, or earlier if warranted. The Commission's decision on the appropriate method for establishing annual fees (i.e., rebaselining vs percentage change) is made each year after considering the criteria for rebaselining and all relevant facts.

2. Small Entity Fee Increase.

Comment. Several comments were received on the proposed 25 percent increase in the small entity annual fees. Some commenters indicated that a 25 percent increase would have negative economic impacts on their businesses. These commenters said it would be difficult for them to recover the increase, and it could force some small companies to give up their licenses. One commenter stated that the NRC's reason for the increase was the decrease in the number of licensees. This commenter said that businesses faced with reduced sales would not be able to increase prices, but rather would be forced to reduce their budgets, and that this would be an obvious solution for the NRC to follow. Two commenters noted that while the annual fee assessed to small entities would increase by 25 percent, the annual fee for certain other licensees, such as gauge users, would not increase.

Several commenters suggested alternatives to the current basis for the small entity annual fee. One commenter suggested that the fee be based on net receipts or receipts from regulated activities. Another recommended that the small entity fee be based on the number of gauges owned or leased. This commenter indicated that there are increased licensing and inspection costs associated with larger numbers of gauges and there would be

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instead of gross receipts

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more it... not
remove it*

the 25 percent increase in the small entity annual fee results from changes that have occurred in the types of costs recovered through annual fees and increases to costs since the \$1,800 small entity fee was established. When the \$1,800 maximum small entity annual fee was established in FY 1991, small entities also paid fees for inspections, amendments, and license renewals, resulting in an average of \$3,400 in fees paid by small entities per year. However, since 1991 the inspection, amendment, and renewal fees have been eliminated from Part 170 charges and have been incorporated in the annual fees assessed to the materials class of licensees. As a result of these and other changes, the average total fees paid per year by other materials licensees increased by approximately 25 percent, from \$6,700 in FY 1991 to \$8,400 in FY 1999. For the same period, the average total fees paid per year by small entities decreased approximately 47 percent, from \$3,400 in FY 1991 to \$1,800 in FY 1999.

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The NRC's size standards, which are codified in 10 CFR 2.810, are outside the scope of this rulemaking. Therefore, commenters' suggestions that the size standards be revised are not being addressed in this final rule. The NRC's receipts-based size standard for small businesses not engaged in manufacturing is based on the most commonly used Small Business Administration (SBA) size standard of \$5.0 million in annual gross receipts for these types of businesses. Gross receipts include revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived.

The NRC has considered comments that the fees for small businesses be based on such factors as the number of gauges used, the volume of patients administered to, or receipts from the use of regulated activities in each fiscal year fee rulemaking, beginning in FY 1991 (~~56 FR 31511, 31512~~, et al). ^{56 FR 31472; July 10, 1991, at pp. 31511-31512, ✓} The NRC has consistently rejected these alternatives because they would not necessarily meet the goal of the RFA to minimize the impact of agency actions on small entities. For example, if the NRC based the reduced annual fee on the number of gauges owned, a large firm with only one gauge would get a reduced fee, while a small business with more than one gauge would pay a larger fee. Similarly, a large medical establishment would pay a reduced fee if only a small part of its business involved nuclear procedures, whereas a small medical facility whose entire business involves nuclear procedures would pay a larger fee. Basing the fees on the small entity size standards ensures that benefits of the reduced fees apply only to small entities.

In FY 1999, approximately 43 percent of the licensees qualifying as small entities for purposes of reduced annual fees qualified for the lower-tier small entity fee. Therefore, because the current lower tier fee significantly reduces the impact of the annual fee for licensees with relatively low gross annual receipts or supporting populations, the NRC does not believe any additional tiers are appropriate.

3. Effects of Shifting Cost Recovery from Part 171 to Part 170.

Comment. Some commenters indicated that the NRC's attempt to shift fees from Part 171 category to Part 170 category is illusionary at best and represents no real savings to the licensee. They further expounded that shifting these costs to Part 170 fees has not

\$345.1 million in FY 1999 to \$346.7 million in FY 2000. In addition, there are approximately 530 fewer licensees available to pay the annual fees in FY 2000, primarily because Ohio became an Agreement State in August, 1999.

4. Impacts of the Revised Annual Fees on Licensees.

Comment. Several commenters stated that the NRC's FY 1999 rebaselining placed a significant financial burden on the uranium recovery industry due to increased fees and that uranium recovery licensees bore a disproportionate share of the cost burden from this process. Many uranium recovery commenters asserted the uranium market is depressed and at a historical low. These commenters claimed that the NRC's current fee structure is excessive and unfair to the uranium recovery industry class of licensee. Furthermore, they indicated that licensees do not have the capability of passing through these additional costs to the consumer, thereby adversely affecting the viability of some companies. A reactor licensee who referred to the challenge of the competitive, unregulated marketplace for utilities, *commented that the cost of regulating the industry is passed on to the consumer. This commenter indicated that businesses do not locate in the company's area, or end up leaving the area, because the electric rates there are among the highest in the State.*

Response. The NRC acknowledges the commenters' concern about the depressed state of the uranium industry and that any increase in fees to uranium recovery licensees poses a significant financial hardship. However, without legislative relief, the NRC is mandated by OBRA-90 to collect approximately 100 percent of its

operating licensees for what amounts to a relatively benign industry from a health and safety standpoint.

Response. In ~~the~~ FYs 1998 and 1999, the NRC considered ways to recover more of its costs through Part 170 fees. The Commission decided in FY 1999, for example, to expand the scope of Part 170 fees to include incident investigations, certain performance assessments and evaluations, reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by PMs (except time spent on generic activities such as rulemaking, and leave). The NRC believes that the costs for the activities not recovered through Part 170 fees are appropriately included in the Part 171 annual fees. These activities include generic efforts, activities exempted from Part 170 fee recovery based on NRC policy or legal constraints, and activities that raise fairness and equity concerns because they do not benefit the licensees who pay the costs. In the FY 1999 final fee rule, the NRC outlined the actions it has taken to address the fairness and equity concerns (64 FR 31448-50). ^{5; June 10, 1999} The response to comments on the FY 2000 proposed fee rule concerning legal issues (A. 1. of this Section) provides an update to the FY 1999 discussion.

The NRC takes issue with the commenters' remark about the uranium recovery industry being subjected to excessive regulatory oversight by the NRC for a relatively low risk operation. The NRC is charged with the responsibility of regulating the nation's civilian radioactive source material supply in a manner that is safe to public health and the environment. Uranium recovery is one of the activities that the NRC regulates under its mandate. The commenters' suggestion that uranium recovery presents a relatively low health and safety risk does not obviate the NRC's responsibility to regulate the industry, nor

Less other receipts	<u>-4.20</u>	<u>-0.10</u>
Part 171 Fee Collections Required	\$341.90	\$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>-5.50</u>	<u>-3.20</u>
Subtotal	<u>3.20</u>	<u>5.70</u>
Total Part 171 Billing	\$345.10	\$346.70

2. Small Entity Annual Fees.

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

Between 1991 and 1999, changes in both the external and internal environment have affected NRC's costs and those of its licensees. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition, the structure of the fees

foot note from
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that NRC charges to its materials licensees changed during the period between 1991 and 1999. In the past, costs for materials license inspections, renewals, and amendments were recovered through Part 170 fees for services. The costs of these activities are now included in the Part 171 annual fees assessed to materials licensees.

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

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

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 will 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 will 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 will be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than \$100,000 and the revised annual fee for the current fiscal year is \$100,000 or more. In this case, the revised amount will be billed to the licensees upon publication of the final rule in the Federal Register, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 2000, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will 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 will 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 will be billed at the FY 2000 revised rates during the anniversary month of their license.

Insert SBREFA Statement - use same as last year - see 60A

manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.



List of Subjects

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

10 CFR Part 171 – Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

and 553a

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

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

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

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

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X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

In codified text, material that is not in table form or a footnote should be double spaced.

§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:

§170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

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

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

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

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

SCHEDULE OF FACILITY FEES
(See footnotes at end of table)

Facility Categories and Type of Fees

Fees^{1/2/}

5. Well logging:

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

Application\$6,100

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

Licensing Full Cost

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specimens

6. Nuclear laundries:

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

Application\$11,400

7. Medical licenses:

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

Application\$6,200

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

Application\$4,500

- C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source

¹ Types of fees - Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

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

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with §170.12(b).

(c) Amendment/revision fees.

Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

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

² Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders.

Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of \$5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

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

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

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

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

Dated at Rockville, Maryland, this ____ day of _____, 2000.

For the Nuclear Regulatory Commission:

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Jesse L. Funches,
Chief Financial Officer.

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

APPENDIX A TO THIS FINAL 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 final 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

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

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

Commenters on the FY 2000 proposed fee rule (65 FR 16250; March 27, 2000), indicated that the same impacts, or variants of these impacts, would occur as a result of the proposed rule, especially in relation to the NRC's proposed 25 percent increase in small entity fees. Commenters also suggested the same alternatives, or variants of these alternatives, to basing fees on the NRC size standards for small entities that have been previously suggested and considered by the NRC. For a complete discussion of the impacts and alternatives suggested by commenters in response to the FY 2000 proposed fee rule, please see Section III, C, 2 of the Supplementary Information section of this final rule.

The NRC has ^{again ✓} 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.

particularly in light of the 25 percent increase in the maximum small entity fees. The NRC

based on its size standards ✓

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

ATTACHMENT 1 TO APPENDIX A

**U. S. Nuclear Regulatory Commission
Small Entity Compliance Guide
Fiscal Year 2000**

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

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

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

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

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

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

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