



From: Catherine Holze
To: GCJ
Date: 3/12/01 5:12PM
Subject: Draft Proposed FY 2001 Fee Rule

I am walking over a mark-up of the subject document to leave on your chair so you will have it first thing in the morning. I am retaining a copy in order to follow along, in case (!) you have any questions about our comments (as if). Seriously, just give me a call and I'll try to explain what we were thinking when we made those scratches on the paper. A very nice effort.

CC: DBD; TBR

9
March 8, 2001

Note to: Trip Rothschild, OGC
Mike Lesar, ADM

From: Diane Dandois



Subject: First draft of Proposed FY 2001 Fee Rule

Enclosed is your very own copy of the proposed FY 2001 Fee Rule. Please review, comment, provide edits, etc.

As usual, Glenda is on a very short time frame and, out of necessity, requests your priority review on an expedited basis. We are asking for turnaround by COB Monday March 12. If this is not feasible, please advise me this morning.

We plan on going out to the offices for concurrences early next week after folding in your edits; therefore no one else has seen this product.

If you need another copy, also call and I can run off a couple more.

We are always in your indebtedness for keeping us on the straight and narrow path. Enjoy.

cc: Anthony Rossi
Acting Director, DAF

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

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 requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately \$453.3 million.

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

equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount from 100 percent to 98 percent of the NRC's budget authority in FY 2001. The OBRA-90 amendment further decreases the fee recovery amount by an additional two percent per year beginning in FY 2002, until the fee recovery amount is 90 percent by FY 2005. In addition to the 2 percent reduction to the fee recovery amount, certain NRC costs related to reviews and assistance provided to other Federal agencies and States were excluded from the fee recovery requirement for FY 2001 by the Energy and Water Development Appropriations Act. The amount to be recovered for FY 2001 is approximately \$453.3 million.

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

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its

date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule would be billed during the anniversary month of the license and ~~continue to pay annual fees at the FY 2000 rate in FY 2001.~~ *for annual fees*

Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule would be billed *annual fees* at the FY 2001 revised rates during the anniversary month of the license and payment would be due on the date of the invoice. *[specified]*

[or explain impact of this due date, i.e., re interest accrual, etc.]

As a matter of courtesy, the NRC plans to continue to mail ^{ing} the proposed fee rules to all licensees, *although, in accordance with its announcement,* However, ^{the} the NRC announced in FY 1998 that, as a cost-saving measure, it planned to discontinue mailing the final rule to all licensees. Accordingly, the NRC does not plan to mail ^{routinely} the FY 2001 final rule, or future final rules, to all licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in late May or early June of 2001. 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 proposing to make changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below:

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

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the 10 CFR Part 170 fees based on the revised hourly rates and the results of the biennial review of fees required by the NRC's Chief Financial Officer (CFO) Act. Additionally, the NRC is proposing to eliminate the current fees assessed to Agreement State licensees who file revisions to their initial requests for reciprocity in states under NRC jurisdiction, and to include the costs for these revisions in the application fees assessed to reciprocity applicants. The NRC is also proposing to establish a registration fee of \$450 for Part 31 general licensees required to register certain types of generally licensed devices.

NRC's ✓
of 1993 (Pub. L. 101-578, Nov. 15, 1990, 104 Stat. 2838) (CFO Act)
what does this mean
as further described in 3 below.

The proposed amendments are as follows:

1. Hourly Rates.

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in §170.20. These proposed rates would be based on the number of FY 2001 direct program full time equivalents (FTEs) and the FY 2001 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 \$150 per hour (\$266,997 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 \$144 per hour (\$255,562 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 2000 final fee rule, the reactor and materials program rates were \$144

pursuant to OMB Co.

What?

2. Fee Adjustments.

The NRC is proposing to adjust the current Part 170 fees in §§170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

what categories — Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete materials licensing actions should be increased in some categories and decreased in others, *as described below,* to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions *was set* were last updated in FY 1999 (64 FR 31448; June 10, 1999). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1999. The proposed licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 2001. ✓

In summary, the proposed licensing fees reflect an increase in average time for new license applications for seven of 33 materials fee categories included in the biennial review, a decrease in average time for five fee categories, and the same average time for the remaining 21 fee categories. Similarly, the average time for export and import new license applications and

amendments remained the same for six fee categories in §§170.21 and 170.31, and decreased for four other fee categories.

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of §171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §171.16. An additional proposed change to Category 16 is discussed in item 3. below. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

minimally
The amounts of the materials licensing "flat" fees were rounded such that they would be ~~de minimis~~ and the resulting flat fee would be convenient to the user. Fees under \$1,000 are rounded to the nearest \$10. Fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000. ✓

3. Fees for Revisions to Initial Reciprocity Applications.

The NRC has taken several actions in the past few years to streamline and stabilize fees assessed to materials user licensees subject to "flat" fees. These actions included elimination of the inspection, renewal, and amendment fees from Part 170, and inclusion of the costs for these activities in the Part 171 annual fees. Materials user licensees affected by these changes have responded favorably to the elimination of multiple types of individual fees.

The NRC is proposing a similar action for certain submittals from Agreement State licensees operating in areas under NRC jurisdiction under the Part 150 reciprocity provisions. Currently, a Part 170 fee of \$1,200 is charged for each initial application for NRC approval to conduct the reciprocity activities, and an additional fee of \$200 is charged for each revision to the initial application. The licensees submit revisions because they have difficulty predicting locations of the reciprocal job sites when they file their initial applications. In FY 2000, only \$23,000 was collected for 115 revisions.

The NRC is proposing to eliminate the revision fees and include the costs for processing them in the fee assessed for each initial reciprocity application. Under this proposal, the reciprocity applicants would no longer be required to submit payments with their revision requests, and the NRC's administrative burdens of processing the revisions for fee collection purposes would be eliminated. This proposed change would result in an increase in the application fee, from \$1,200 to \$1,400. The costs of the reciprocity program would still be recovered from those receiving the benefit of the NRC's reciprocity activities. It is the NRC's belief that the nominal increase to the application fee, and any potential inequities that might result because not all reciprocity licensees file revisions during the year, are outweighed by the efficiencies to be gained by both the reciprocity applicants and the NRC ⁱⁿ by streamlining the process. ✓

4. Fees for General License Registrations.

The NRC published a proposed rule in the Federal Register on July 26, 1999, (64 FR 40295) stating its intent to amend current regulations governing the use of byproduct material in

certain measuring, gauging, or controlling devices. The proposed amendments included adding explicit requirements for: initiating a registration process under 10 CFR 31.5 for certain generally licenced devices; establishing a registration fee; modifying reporting, record-keeping, and labeling requirements; and clarifying which provisions of the regulations apply to all general licenses for byproduct material. The NRC stated in the proposed rule that the registration fee would recover the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, processing and reviewing the registrations, and for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, would be exempt from the fee under §170.11. Costs not recovered from this small segment of the general licensees registering devices would continue to be recovered from annual fees paid by current holders of specific licenses. The NRC also stated in the proposed rule that the requirement for the registration fee ^{would} will be effective after the initial registration requests are sent for response under §31.5(c). In this manner, the first round of registrations will be complete prior to the effective date of the registration fee.

✓
✓

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 requiring certain general licensees to register their generally licensed devices each year with the NRC and pay the appropriate registration fee. Therein the NRC stated that the final fee, estimated at approximately \$440 to \$450, would be established in the FY 2001 fee rulemaking based on that year's budgeted costs for the program, the new FTE rate, and the estimated number of general licensees required to register.

✓

The NRC currently estimates that approximately 4300 general licensees will be required to register their generally licensed devices. Based on the estimated number of registrants, current resource estimates, and the FY 2001 FTE rate, the proposed registration fee is \$450. This registration fee would be imposed with the first re-registration for all devices currently in use. Because this is a "flat" fee based on average cost, it will be reviewed biennially as required by the CFO Act. The registration fee established in the FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

Does this mean no initial registration fee is imposed - only an initial annual fee for registration affected? How this cost will be for future registrants?

5. Fee Waivers.

In the recent past, several requests for Part 170 fee exemptions have been filed by licensees and ^{various} other organizations who submit topical reports ^{or make} and other requests to the NRC for review ^{of other documents}. Part 170 currently provides that fees will not be assessed for requests or reports submitted to the NRC in response to an NRC inquiry to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin, or as a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts. Many of the fee exemption requests have been denied because the submittals have not met the intent of the waiver provision. For example, the basis for several fee waiver requests was predicated on the industry's future use of the reports, rather than NRC's use of these reports for generic regulatory improvements.

see on add attached response

In the statement of considerations for the FY 1994 fee rule (59 FR 36895) which incorporated this fee waiver provision, the NRC stated that it believed the costs for some

requests or reports filed with the NRC are more appropriately captured in the Part 171 annual fees rather than assessing specific fees under Part 170. The statement of considerations continued that these reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations and resolution of safety issues applicable to a class of licensee. ^{to} To clarify the intent of the fee waiver provision, the NRC is modifying the current criterion 3. of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to specifically state that the reports must support NRC's generic regulatory improvements or efforts. In addition, criterion 1., 2., and 3. of Footnote 4 to §170.21 would be redesignated as criterion (a), (b), and (c). *given*

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

1. Revise the material and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;
3. Eliminate fees for Agreement State licensees who submit revisions to their initial requests for reciprocity in States under NRC jurisdiction, and incorporate these costs into the initial reciprocity application fee;

4. Establish registration fees to be assessed to licensees who are required to register their generally licensed devices, beginning after the first round of registrations is completed; and
5. Clarify that the fee waiver provisions of the current criterion 3 of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 apply only to requests/reports that support NRC's generic regulatory improvements or efforts, and redesignate criterion 1., 2., and 3., of Footnote 4 to §170.21 as criterion (a), (b), and (c).

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

The NRC proposes to revise the annual fees for FY 2001 and revise the current process for providing NRC Form 526 to licensees for purposes of certifying that they qualify as a small entity. The proposed amendments are as follows:

1. Annual Fees.

The NRC is proposing to establish new rebaselined annual fees for FY 2001. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995) and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be reestablished (rebaselined) at least every third year, and more

frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 1999.

After carefully considering all factors, including the changes to the amount of the budget allocated to classes of licensees, and weighing the complex issues related to both fairness and stability of fees, the Commission has determined that it is appropriate to rebaseline its Part 171 annual fees this year. Rebaselining fees would result in reduced annual fees for a majority of the categories of licenses, and increased annual fees for other categories, *as described in more detail below.*

Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with fee increases, establishing new baseline annual fees this year would result in a more precise relationship between annual fees and NRC costs of providing services. It thus would constitute *a suitable* means to fairly and equitably allocate costs among the NRC's licensees.

The annual fees in §§171.15 and 171.16 would be revised for FY 2001 to recover approximately 98 percent of the NRC's FY 2001 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2001 is \$338.1 million, compared to \$341.0 million for FY 2000.

The proposed FY 2001 annual fees would increase for some categories of licensees and decrease for others from the previous year. The decreases in annual fees range from approximately 0.4 percent for operating power reactor licensees (including the spent fuel storage/reactor decommissioning annual fee), to 29.0 percent for uranium recovery licensees, and 42 percent DOE UMTRCA activities. The increases in annual fees range from approximately

2.5 percent for materials licenses authorizing distribution of radiopharmaceuticals, to approximately 165.0 percent for transportation users.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs affecting the classes of licensees, the reduction in the fee recovery rate from 100 percent for FY 2000 to 98 percent for FY 2001, the estimated Part 170 collections for the various classes of licensees, the increased hourly rates, decreases in the numbers of licensees for certain categories of licenses, and, for the materials user class, the results of the biennial review of Part 170 fees required by the CFO Act. The biennial review shows that the average number of professional hours to conduct inspections and to review new license applications for material S licenses increased for some fee categories, decreased for others, or remained the same. The average time to conduct inspections and to review new license applications for the materials user license fee categories are used to allocate the materials budget for rebaselining the annual fees because they serve as accurate measures to reflect the complexity of the licensing. Increases in the average professional time for inspections and reviews of new license applications result in higher annual fees for the affected fee categories, assuming all else remains the same (e.g., no loss of licensees).

The increase for the transportation users, who would have the largest percentage increase, is due primarily to the budgeted costs for the enhanced participatory Part 71 rulemaking, and the Office of Nuclear Material Safety and Safeguards' risk study activities. In addition, there has been a shift in the distribution of the budgeted costs associated with quality assurance reviews and Part 71 vendor inspections. The budgeted costs for these activities are currently used to allocate the total annual fee amount for the transportation class, less the

workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

already on pp. 6-7

Because the FY 2001 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 2001 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 2001 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the FY 2001 final rule would be billed during the anniversary month of the license, and continue to pay annual fees at the FY 2000 rate in FY 2001. However, those material licensees whose license anniversary date falls on or after the effective date of the FY 2001 final rule would be billed at the FY 2001 rates during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities.

The FY 2001 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licensees is approximately \$17.6 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory

Class I (conventional mills)	3	770	2310	33
Class II (in-situ mills)	6.5 ¹	645	4193	59
11e(2) disposal	1	475	475	7
11e(2) disposal incident to existing tailings sites)	1	75	75	1

¹The FY 2001 annual fee would be prorated 50% for Cogema Mining's License SUA-1341 based on its November 10, 2000, request that the license be amended for possession only.

Applying these factors to the \$861,000 in costs to be recovered results in the following proposed annual fees:

<u>Facility type</u>	<u>Proposed FY 2001 Annual Fee</u>
Class I (conventional mills)	\$94,000
Class II (in-situ mills)	78,700
11e(2) disposal	58,000
11e(2) disposal incidental to existing tailings sites)	9,200

Because the proposed FY 2001 annual fees for the uranium recovery class, with the exception of the annual fee for DOE UMTRCA site program, would drop below the \$100,000 threshold established for quarterly billing, uranium recovery licensees would become subject to billing of the full amount of the annual fee based on the anniversary date of their license. Some of these licensees were billed on a quarterly basis during FY 2001 based on the FY 2000 annual fee

✓
*Clarity
 necessary
 for
 impact
 how does
 this
 affect
 licensees?*

divided equally among the four non-power reactors subject to annual fees. This results ⁱⁿ is a proposed FY 2001 annual fee of \$74,000 for each licensee. ✓

F. Rare Earth Facilities.

The FY 2001 budgeted costs of approximately \$89,000 for rare earth facilities to be recovered through annual fees would be divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is a proposed FY 2001 annual fee of \$29,600 for each rare earth facility.

G. Materials Users.

To equitably and fairly allocate the \$23.1 million in FY 2001 budgeted costs to be recovered in annual fees assessed to the approximately 5000 diverse materials users and registrants, the NRC has continued to use the methodology used in FY 1999 to establish baseline annual fees for this class. The annual fees are based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows: ✓

Approximately 74 percent would be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use, resulting in a proposed annual fee of \$62,400 for each of the 36 holders of these quality assurance plans.

3. Small Entity Annual Fees.

Cross-ref. small entity discussion for this paper

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2001. ^f For the first time since they were introduced in FY 1991 and FY 1992, the NRC revised the small entity fees in FY 2000 based on changes that had occurred in the fee structure for materials licensees over time and the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established. The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other materials licensees to be significant enough to warrant another change to the small entity fees this year. ✓

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of \$500 and \$2,300 provide considerable relief to many small entities.

Because the annual fees for materials users now include the cost of amendments, renewals, and inspections, in the future the NRC plans to re-examine small entity fees as part of its biennial review of fees required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule,

explain rationale better

4. Other Amendments.

A. The NRC currently sends an NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171," with each annual fee invoice issued to materials licensees. Although the instructions on the Form state that it is to be filed only by those licensees who qualify as a small entity under NRC's size standards, the NRC has received many improperly filed Forms. When contacted, many of these licensees have indicated they completed the Form because it was enclosed with the annual fee invoice. In an effort to minimize the number of improperly filed Forms, the NRC is proposing to discontinue mailing the Form with each annual fee invoice. Instead, licensees would be able to access NRC Form 526 *and utilize it* on the NRC's external web site at <http://www.nrc.gov> if they qualify as a "small entity" under the NRC size standards requirements at 10 CFR Part 2.810. For licensees who cannot access the NRC's external web site, NRC Form 526 could be obtained either through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice, by calling the NRC's fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov. *[anybody could access]*

In summary, the NRC is proposing to:

1. Establish new rebaselined annual fees for FY 2001.
2. Revise Section 171.16(c)(2) to eliminate the mailing of NRC Form 526 with the annual fee invoice to individual materials licensees.
3. Re-examine the small entity fees in the future ^{as} as part of the biennial review of fees required by the CFO's Act.

III. Plain Language

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

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 98 percent of its budget authority in FY 2001 as is required by the

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

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

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

Full cost fees will Full cost fees will

7. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Less than 20,000 \$500

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

35 to 500 employees \$2,300

Less than 35 employees \$500

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

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at <http://www.nrc.gov>. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. The Form can also be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at [<fees@nrc.gov>](mailto:fees@nrc.gov)

ok here

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

appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount for FY 2001 to 98 percent of the NRC's budget. Certain NRC costs related to reviews and assistance provided to other Federal agencies and States were excluded from the fee recovery requirement for FY 2001 by the Energy and Water Development Appropriations Act. The amount to be recovered for FY 2001 is approximately \$453.3 - ✓

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

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

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration guidelines:

i) A small business concern is an independently owned and operated entity which is not considered ^{dominant} dominate in its field of operations. ✓

ii) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely numbers of employees working for the licensee or conducting NRC licensed activities for the company).

iii) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

iv) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

Small Business Not Engaged

Maximum Annual Fee

Supported, and have 500 Employees

or Less

35 to 500 employees	\$2,300
Less than 35 employees	\$500

To pay a reduced annual fee, a licensee must use NRC Form 526. The NRC is proposing to eliminate mailing NRC Form 526 with the annual fee invoice. Instead, licensees can access this form on the NRC's external web site at <http://www.nrc.gov> ^{and utilize it} if they qualify as a "small entity" under the NRC size standards requirements at 10 CFR Part 2.810. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the Form by calling the fee staff at 301-415-7544, or by e-mailing us at fees@nrc.gov.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.
2. Complete all items on NRC Form 526 as follows:
 - a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.
 - b. The Standard Industrial Classification (SIC) Code must be entered if known.
 - c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the