



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

May 29, 2001

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

FROM: *Michael T. Lesar*  
Michael T. Lesar, Chief  
Rules and Directives Branch  
Division of Administrative Services  
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON THE FINAL FY 2001 FEE RULE

The Office of Administration concurs, subject to the comments provided, on the final rule to establish the licensing, inspection, and annual fees necessary to recover approximately 98 percent of the NRC's operating budget for FY 2001. We have attached a marked copy of the package that presents our comments.

If you have any questions concerning this matter, please contact Michael T. Lesar, Chief, Rules and Directives Branch, ADM, at 415-7163 (MTL) or Victoria Voytko, ADM, at 415-6075 (VNV).

Attachment: As stated

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RIN: 3150-AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

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 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.

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

*State ADAMS Accession #s*

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ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are 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 Documents 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, or 301-415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

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](mailto:CAG@nrc.gov).

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2736. ✓

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. Responses to Comments
- II ✓ Final Action

and explanations of how the fees were calculated to recover the budgeted costs for those activities, the proposed rule also announced that the work papers supporting the proposed rule were available for public examination. As the proposed rule stated, the work papers were available in the NRC's Agencywide Documents Access and Management System (ADAMS) for public examination (Accession No. ML010860287). During the 30-day comment period the work papers were also available in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD for the public's use. The work papers include extensive information detailing the activities and the associated budgeted resources allocated to the various classes of licensees. The work papers show, by strategic arena, the allocation of budgeted costs for each planned accomplishment within each program of each strategic arena. In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG-1100, Volume 16, "Budget Estimates and Performance Plan, Fiscal Year 2001 (February 2000)," <sup>(Accession No. ML 003688 289)</sup> which discusses the NRC's budget for FY 2001, including the activities to be performed in each strategic arena. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule. ✓

The NRC's budgets and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 98 percent of the NRC's FY 2001 budget authority, less the amounts appropriated from the NWF and the General Fund, as required by OBRA-90, as amended. Therefore, <sup>4 a the</sup> commenter's suggestion that more detailed information would allow the public to provide more effective comments concerning the efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule. ✓

B. Specific Part 170 Issues.

1. ✓  
✓  
A. Hourly Rates.

✓

*Comment.* Some commenters opposed the \$144 proposed hourly rate for the materials program. As in similar comments received from the uranium recovery industry on the issue in previous fee schedule rulemakings, the commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and should be substantially reduced.

*Response.* The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The professional FTE rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information technology overhead costs, as well as general and administrative costs, such as rent, heat, supplies, and payroll and human resources staffs.

The proposed hourly rate of \$144 for the materials program is a very slight increase over the \$143 hourly rate for FY 2000. As stated in the proposed rule, the increase is primarily due to the Government-wide pay increase in FY 2001. The revised hourly rates, coupled with the direct contract costs, recover through Part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA, and the revised hourly rates plus direct contract costs recover through Part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through Part 170 fees, as required by OBRA-

90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. The professional hourly rate for the reactor program is \$150, and the professional hourly rate for the materials program is \$144. For Part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

2. ✓  
B. ✓

Project Manager Billing Issues.

*Comment.* Four comments were received opposing NRC's assessment of Part 170 fees to uranium recovery licensees to recover the costs for Project Managers (PM) assigned to their licenses. Commenters indicated that the PM charges have become an additional expense for the industry. These commenters raised several specific concerns with this fee recovery policy: the PM costs represent administrative charges that may or may not be directly related to the licensee's operations; the PM charges include generic efforts, such as rulemaking activities; licensees have no way to control these costs because the charges are allocated evenly among the licensees to which that PM is assigned; and the problem is exacerbated when a PM is assigned to only one, or in some cases only a few, licensee(s) who must pay all of the overhead costs associated with that PM. Several commenters supported the re-designation of PMs assigned to uranium recovery licenses as points of contact, particularly for those licensees who are not currently operating. One commenter stated that to the extent the NRC is required to recover these costs, it should do so through the annual fee to spread the costs more equitably across a range of licensees. One commenter asserts that the billing policy is an unjustified and *ultra vires* (beyond NRC's legitimate powers) implementation of its OBRA responsibilities, and that it cannot be defended, particularly as a shift of costs from Part 171 fees to Part 170 fees,

because there has not been a decrease in the Part 171 fees commensurate with the increase in Part 170 fees. Referring to an NRC guidance document for staff hour reporting and coding of activities in NRC's Regulatory Information Tracking System (RITS) (the system used by the NRC to record and track staff hours and from which data is gathered for fee billing purposes), the same commenter charges that there is virtually no activity a PM performs that is excluded from fee recovery. The commenter claims that licensees are billed for generic efforts, despite statements to the contrary in the final FY 1999 fee rule (64 FR 31448; June 10, 1999), giving as an example "rulemaking oversight" which is assigned a code in RITS. The same commenter stated that nothing in the statements of consideration for the FY 1999 final rule, which provided examples of PM activities that would be included in Part 170 fees, indicated that licensees would be charged for PM activities for work on the NRC's accounting system or work for another branch/office.

*Response.* The NRC assesses Part 170 fees for PM activities under the authority of the IOAA. In the FY 1999 fee rule, the NRC stated that expanding the scope of Part 170 to include, for example, full cost recovery for PMs, is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. Because PM activities are services which the NRC provides to specific, identifiable recipients, it is more appropriate that the costs, less costs for generic activities and leave time, be recovered through Part 170 fees assessed to

recovery licensees subject to annual fees would pay more in total costs because those licensees in decommissioning, and therefore are not subject to annual fees, would no longer pay for the PMs assigned to their site. Instead, the licensees authorized to operate or in a standby status would pay those PM costs through annual fees. To illustrate this point, the estimated average total PM Part 170 fees paid per year by uranium recovery licensees in decommissioning or possession only status is \$322,000. If the NRC eliminated PM activities from Part 170 fees for the uranium recovery class for a full fiscal year, the 11 licensees authorized to operate or in a standby status would be assessed an additional \$322,000 in annual fees for that fiscal year in order to recover those costs.

The NRC finds no basis to change its policy at this time of recovering the costs for PMs through Part 170 fees, to change the manner in which the costs are spread among those licensees assigned to one PM, or to change the policy with regard to assessing one licensee for all of the PM's activities when the PM is assigned to that one site only. The NRC believes this is a fair and equitable method of recovering these costs.

3. ✓  
e.

Clarification of Fee Waiver Provisions in §170.21, Footnote 4 and §170.31, Footnote 5.

*Comment.* Two comments were received on the NRC's clarification of the fee waivers provided in 10 CFR 170.21, Footnote 4, criterion 3, and 10 CFR 170.31, Footnote 5, criterion (c) for certain documents submitted to the NRC. One commenter expressed concern that the NRC is shifting cost recovery for generic activities from Part 171 to Part 170. Both commenters contend that the clarification will discourage generic actions and is inconsistent with the



benefits from the review and approval of reports/requests that are submitted for purposes other than NRC's generic regulatory improvements, the primary beneficiary of the review and approval of such reports is the organization that submitted the report. Assessing Part 170 fees for these special services rendered to identifiable recipients is consistent with the provisions of the IOAA. Contrary to one commenter's view, reports of this type do not represent NRC generic activities. Therefore the NRC is not shifting cost recovery for generic activities out of Part 171 to Part 170.

To assist licensees in determining in advance whether their submissions meet the criteria for the fee waiver, the NRC is, in this final rule, re-stating the original statements of considerations for the FY 1994 rule related to the fee waivers, and is adding clarifying language to the Footnotes that the reports/requests must be submitted for the purpose of NRC's regulatory improvements for the fee to be waived. This is not a change in policy, is consistent with how the fee waiver provisions have been applied by the NRC, and is not inconsistent with the NRC's strategic goals.

4. ✓  
D. Invoice Information. ✓

*Comment.* Several commenters assert that NRC's invoices lack adequate explanations of the work done and the dates the work was performed. These commenters urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, commenters contend that the change would serve the NRC, its licensees, and the public well.

*Response.* As the NRC has stated in response to similar comments on previous rules, the NRC believes that sufficient information is provided on the invoices for licensees and

applicants to base payment of the costs assessed under Part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in RITS, which is the NRC's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From RITS, the fee billing system captures the NRC staff hours for activities billable under Part 170 as well as the work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the name of the staff member performing the work, and the date the work was completed, if applicable, are printed on the enclosure to the Part 170 invoices. Currently, the work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in RITS. However, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts. Additionally, the inspection report number is provided on inspection fee bills. Further, as the NRC has stated in previous rules, any applicant or licensee who does not understand the charges or needs more information in order to understand the bill may request additional details from the NRC. All available information in support of the bill will be provided. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

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For contractor costs billed to uranium recovery licensees under Part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Again, any additional information that is available is provided upon a specific request of the applicant or licensee. However, as the NRC has explained in the past, the NRC does not plan to develop additional systems solely to provide additional information on its fee invoices. The Office of Management and Budget Circular A-25, which provides guidelines for Federal agencies to assess fees for

Government services, provides that new cost accounting systems do not need to be established solely for the purpose of determining or estimating full cost.

C. Specific Part 171 Issues.

1. ✓  
A. Fee Exemption for Educational Institutions.

*Comment.* One college holding an NRC materials license commented that the proposed fee rule would represent a major financial burden to the college, and they would have to consider terminating their license. The commenter requested that NRC provide a fee exemption for small colleges and universities.

*Response.* The NRC has not changed the existing fee exemptions for nonprofit educational institutions. The Part 170 and Part 171 fee exemptions for nonprofit educational institutions were not shown in the proposed rule for public comment because only sections of a regulation that are being considered for change in a proposed rulemaking are published in the Federal Register as part of the rulemaking process.

As provided in 10 CFR 170.11(a)(4) and 10 CFR 171.11(a)(1), fees are not required for a license applied for by, or issued to, a nonprofit educational institution. Therefore, most colleges and universities will continue to be exempt from Part 170 and Part 171 fees. However, the fee exemptions do not apply to those licenses which authorize human use, remunerated services to other persons, distribution of byproduct, source, or special nuclear materials or products.

containing byproduct, source, or special nuclear material<sup>✓</sup> or activities performed under a Government contract.

2. Small Entity Fees.

*Comment.* One commenter stated that the range of \$350,000 to \$5,000,000 in gross annual receipts for the two tiers of annual fees for small entities is too large. The commenter indicated that their firm is at the lower end of the range, paying the same annual fee as another entity with four to five times their gross revenue. The commenter suggested that to help reduce the license fee burden on smaller entities, the NRC establish additional tiers between the \$350,000 and \$5,000,000 range; for example, a tier of \$350,000 to \$1,500,000 in gross annual receipts with an annual fee of \$1,000, and a tier of \$1,500,000 to \$5,000,000 with an annual fee of \$1,500.

*Response.* The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross receipts. Reductions in fees for small entities must be paid for by other NRC licensees in order to meet the requirements of OBRA-90, as amended, to recover most of the NRC's budget through fees. While establishing more tiers would provide additional fee relief for some small entities, it would result in an increase in the small entity subsidy other licensees pay. The NRC believes that in order to maintain a reasonable balance between the objectives of OBRA-90 and the Regulatory Flexibility Act of 1980 (RFA) requirement that the NRC examine ways to minimize significant impacts its rules may have on a substantial number of small entities, no further reductions to the fees should be made.

Both commenters stated that the proposal would result in an additional burden on NRC staff due to increased telephone calls requesting the form and staff efforts to mail or fax the form to those requesting it. One commenter believes that many licensees do not read the proposed and final fee rules, and therefore would not be aware of the revised policy. This would result in more calls to the NRC asking why the form was not enclosed with the invoice.

*Response.* NRC Form 526 is one sheet, with the five NRC size standards for small entities printed on the front, and the instructions for completing the form printed on the back. Both sides of the form state, in capital letters and in large print, that the form should not be completed if the licensee does not qualify under one of the size standards shown. In addition, the Certification block, which is to be signed by the owner of the small entity or an official empowered to act on behalf of that entity, states "I certify that the above named NRC licensee qualifies as a small entity under the size standards established by the NRC for its licensees in 10 CFR 2.810 (60 [FR] 18344). The licensee qualifies as a small entity under the specific size standard indicated above." Thus, the NRC believes the form and the accompanying instructions are clear that the form should be completed only by those licensees that qualify as a small entity under NRC's size standards.

However, as indicated in the proposed rule, the NRC continues to receive forms completed by licensees who do not qualify as a small entity. When contacted about improperly filed forms, many of these licensees indicate they thought they had to complete the form because

**From:** Victoria Voytko  
**To:** Glenda Jackson  
**Date:** 5/29/01 2:22PM  
**Subject:** Comments on Fee Rule copy

On p. 20 of the the fee rule, Mike has struck the square brackets that I suggested you put around the "FR" in the quote from Form 526. He says that the OFR won't allow brackets inside an FR citation. (Sorry: I didn't know about that rule.)

However, Mike says the OFR will also be unhappy to see something like "60 CFR 18344", since they'll know that it's a bad citation. So, in order to avoid having the fee rule held up at the OFR, he suggests simply writing the cite as "60 FR 18344", with no brackets. This corrects the citation without violating OFR protocol.

Also (a very small point): I just noticed that the subheading to Table IV - Surcharge Costs, on p. 50, reads "[Dollars in Millions]". The second bracket should be square, like the first. ✓

Victoria Voytko, TWFN 6, D-16  
Rules and Directives Branch  
301-415-6075

Some commenters referred to the April 10, 2001, Commissioners' Briefing provided by the National Mining Association, where the status of the uranium recovery industry, the impacts of NRC's fees on the industry, and the potential for seeking fee relief were discussed. Several commenters supported an industry-wide effort to seek relief from NRC's fees through a petition for rulemaking or by pursuing legislative relief. Commenters claim that the fees NRC charges uranium recovery licensees threaten the viability of the industry, which is vital to the nation's long-term energy security.

*Response.* Discussions between the uranium recovery industry and the NRC continue as of the date of this Federal Register notice. <sup>document @ ✓</sup> and The industry has indicated they may file a rulemaking petition, <sup>✓</sup> or seek some other form of relief from NRC fees. The NRC will consider fully and carefully, and with an open mind, any petition the industry may choose to file. For now, however, for the reasons given in the remainder of this response, the NRC will pursue its existing policies on the fees to be charged to uranium recovery licensees.

The NRC has responded to similar comments concerning the impact of its fees on the uranium recovery industry in several prior fee rulemakings. Most recently, the NRC responded to these concerns in the FY 2000 final rule (65 FR 36950, 36951; June 12, 2000). As explained there, the NRC recognizes that fees may result in a substantial financial hardship for the uranium recovery industry, particularly in light of the industry's economic status and the potential for a decreasing number of uranium recovery licensees. However, consistent with the OBRA-90 requirement that the annual fees must, to the maximum extent practicable, have a reasonable

relationship to the cost of providing regulatory services, the NRC's ~~proposed~~<sup>2</sup> annual fees for the uranium recovery class of licensees reflect the NRC's cost of its regulatory services to the class. The NRC determined the costs to be allocated to each class through an extensive review of each planned accomplishment in the major program areas.

As the NRC has stated since FY 1991 when the 100 percent fee recovery requirement was first implemented, the agency recognizes that assessing fees to recover these costs as required by OBRA-90 may result in adverse economic impacts on some licensees. However, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. It is largely for this reason that the NRC has heretofore not based the annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts it is required by law to consider.

The NRC provides reduced annual fees for licensees who qualify as small entities under NRC's size standards, based on a determination under the provisions of the Regulatory Flexibility Act that annual fees have a significant economic impact on a substantial number of small entities. The reduction in annual fees for qualifying small entity uranium recovery licensees is significant. For example, for FY 2000, an in-situ mill licensee paid a reduced annual fee of \$400 based on their small entity status, a reduction of \$26,850. Because OBRA-90 requires that the NRC recover most of its budget through fees, costs not recovered from licensees based on their small entity status, or for any other reason, are allocated to other licensees. The subsidy for small



entities is recovered through the surcharge, with reactors paying about 80 percent of the total surcharge costs.

*licensees*

A decrease in the number of licensees does not necessarily reduce the need for NRC's generic efforts and other activities recovered through Part 171 annual fees. For example, the number of licensees does not affect the NRC's costs to establish a risk-informed, performance-based regulatory framework or to maintain the Emergency Response Center. However, the NRC budget process provides an on-going mechanism for assuring that its programs are carried out in the most efficient and effective manner. In FY 1999, budgeted costs of \$5.8 million were allocated to the uranium recovery class, including \$0.7 million in surcharge costs. In FY 2001, \$4.3 million has been allocated to the uranium recovery class, including \$0.4 million in surcharge costs. Thus, the budgeted costs for this class, including the allocated surcharge costs, have been reduced by 25 percent since the last rebaselining in FY 1999. After subtracting the estimated Part 170 collections and other adjustments, the costs remaining to be recovered through annual fees assessed to the class for FY 2001 is \$1.5 million, compared to \$2.1 million for FY 1999, a reduction of approximately 29 percent as reflected in the reduced annual fees to be assessed uranium recovery licensees for FY 2001.

The NRC has no choice but to assess annual fees to NRC licensees to recover the budgeted costs not recovered through Part 170 fees and other receipts. However, as stated in the proposed rule, to address fairness and equity concerns raised by the NRC related to assessing fees to NRC licensees to recover costs for activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to reduce the NRC's fee recovery requirement by 2 percent per year beginning in FY 2001, until the fee

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2001 final rule or future final rules to 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](mailto:fees@nrc.gov). 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 amending 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 revising the hourly rates used to calculate fees and is adjusting the 10 CFR Part 170 fees based on the revised hourly rates and the results of the NRC's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, Nov. 15, 1990, 104 Stat. 2838) (CFO Act). Additionally, the NRC is eliminating the fees currently assessed to Agreement State licensees who file revisions to the information submitted on their initial filing of NRC Form 241, "Report of Proposed Activities in Non-Agreement States," and including the costs for these revisions in the application fees assessed for the initial Form 241. The NRC is also establishing an annual registration fee of \$450 to be assessed for Part 31 general licensees

the industry's future use of the reports, rather than these reports being submitted, reviewed, and approved for the purpose of NRC's generic regulatory improvements.

In the statement of considerations for the FY 1994 fee rule (59 FR 36895; July 20, 1994),<sup>n</sup> ✓  
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 <sup>to state ✓</sup> 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.

In summary, the NRC is amending 10 CFR Part 170 to <sup>✓</sup>  
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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;

Reactors					
Spent Fuel Storage/	---	---	9.2	4.3	4.3
Reactor Decomm.					
Nonpower Reactors	---	---	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.3	2.5	2.6
Materials Users	18	0.3	3.9	1.8	2.1
Transportation	---	---	1.2	0.5	0.5
Rare Earth Facilities	---	---	0.2	0.1	0.1
Uranium Recovery	---	---	1.0	<u>0.4</u>	<u>0.4</u>
TOTAL SURCHARGE		1.7		46.6	48.3

The budgeted costs allocated to each class of licensees and the calculations of the rebaselined fees are described in A through H below. The work papers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licensee and how the fees are calculated. The work papers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address <http://www.gov/NRC/ADAMS/index.html>. For a period of 90 days after the effective date of this final rule, the work papers 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.

Because the FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2001 will 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

Facility typeFY 2001 Annual Fee

Class I (conventional mills)	\$94,300
Class II (in-situ mills)	79,000
11e(2) disposal	58,200
11e(2) disposal incidental to existing tailings sites	9,200

The FY 2001 annual fees for Class I and Class II facilities (conventional mills and in-situ mills), are below the \$100,000 threshold currently established in §171.19 for quarterly billing, and therefore, under the current requirements these licensees would be subject to annual fee billing based on the anniversary date of their license for FY 2001. In FY 1999 the reverse situation occurred for these licensees; i.e., in FY 1998 the annual fees were below the \$100,000 quarterly billing threshold and the licensees were billed on the license anniversary date, but beginning in FY 1999 the licensees became subject to quarterly billing for the annual fees because the fees were over the \$100,000 threshold. Because the annual fees for these licensees have been close to the \$100,000 threshold, small changes to the annual fee amounts have resulted in frequent changes to their annual fee billing schedule. To provide stability in the billing schedule, the NRC is revising §171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. This will provide these licensees with a consistent, predictable schedule for paying their annual fees. As provided in §171.19(b), if the amounts collected in the first three quarters of FY 2001 exceed the amount of the revised annual fee, the overpayment will be refunded.

c. Power Reactors

The approximately \$258.7 million in budgeted costs to be recovered through FY 2001 annual fees assessed to operating power reactors are allocated uniformly to the 104 operating power reactors. This results in a FY 2001 annual fee of \$2,487,000 per reactor. Additionally, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee, which for FY 2001 is \$266,000. This results in a total FY 2001 combined annual fee of \$2,753,000 for each operating power reactor.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2001, budgeted costs of approximately \$32.2 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to Part 50 power reactors, except those reactors in decommissioning <sup>which</sup> do not have spent fuel on site, and to Part 72 licensees who do not hold a Part 50 license. The costs are divided equally among the 121 licensees, resulting in an FY 2001 annual fee of \$266,000 per licensee. ✓

e. Non-power Reactors

Approximately \$296,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licensees for FY 2001. This amount is divided equally among the four non-power reactors subject to annual fees. This results in an FY 2001 annual fee of \$74,000 for each licensee.

(b) \*\*\*

(2) Shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

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

3. The authority citation for Part 170 is revised to read as follows:

Authority: sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

4. Section 170.2 is amended by adding a new paragraph (s) to read as follows: ✓

§170.2 Scope.

\*\*\*\*\*

(1) 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;

(2) 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 the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

\* \* \* \* \*

6. In Section 170.12, paragraph (a) is revised to read as follows:

§170.12 Payment of Fees (C) ✓

(a) *Application and registration fees.* Each application or registration for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category before receiving the prescribed application fee. The application or registration fee(s) is charged whether the Commission approves the application or not. The application or registration fee(s) is also charged if the applicant withdraws the application or registration.

\* \* \* \* \*



(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2001 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$266,000.

(2) The FY 2001 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 spent fuel storage/reactor decommissioning rebaselined 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 2001 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 of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act) ✓

(2) The total FY 2001 surcharge allocated to the operating power reactor class of licensees is \$38.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2001 operating power reactor surcharge to be assessed to each operating power reactor is approximately \$367,000. This amount is calculated by dividing the total operating power reactor surcharge (\$38.2 million) by the number of operating power reactors (104).

✓  
Makes structure of (iii) parallel to that of (ii)

Form 526 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, by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at [fees@nrc.gov](mailto:fees@nrc.gov) ✓

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

(4) The maximum annual fee a small entity is required to pay is \$2,300 for each category applicable to the license(s).

(d) The FY 2001 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 2001 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2001 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)

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Category of materials licenses

Annual Fees<sup>1, 2, 3</sup>

1. Special nuclear material:

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, ~~in~~ <sup>as it</sup> developing <sup>ed</sup> each of its fee rules since 1991. ✓

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

### III. Maximum Fee


The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six

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.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. 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. As a result of the re-analysis, the maximum small entity annual fee was increased from \$1,800 to \$2,300 in FY 2000. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the annual fee for many small entities was 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 NRC determined that the 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 range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee

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 recover 98 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 analysis, 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 population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions established in the FY 2000 fee rule remain valid for FY 2001.



## Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this compliance guide has been prepared to assist NRC material licensees in complying with the FY 2001 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2001 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. Effective with the final FY 2001 fee rule, the NRC will phase out sending NRC Form 526 with each materials license annual fee invoice. This form can be accessed on the NRC's external web site at <http://www.nrc.gov>. The form can then be accessed by selecting "Planning & Financial Management" and then selecting "NRC License Fee Program" and under "Forms" selecting NRC Form 526. Licensees who cannot access the NRC's external web site may obtain NRC Form 526 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. Alternatively, the form may 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). The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S.

Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

#### NRC Definition of Small Entity

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

1. *Small business*--a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;
2. *Manufacturing industry*--a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;
3. *Small organizations*--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 institutional institution*--an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.<sup>1</sup>

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<sup>1</sup> 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.



- 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 invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.
- d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:
  - (1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.
  - (2) The size standards apply to the licensee, including all parent companies and affiliates<sup>#</sup> not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material. ✓
  - (3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources<sup>#</sup> not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. ✓  
These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another

should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found at 10 CFR Part 13.