

that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

\*\*\*\*\*

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
 Jesse L. Funches,  
 Chief Financial Officer.

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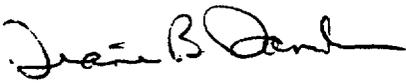
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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 24, 2001

MEMORANDUM TO: Multiple Addressees  
(See Attached List)

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

SUBJECT: FINAL NOTICE OF RULEMAKING -- 10 CFR PARTS 170  
AND 171 -- FEE RECOVERY FOR FY 2001

Attached for your concurrence is a final rule for the FY 2001 fees to be assessed to recover 98 percent of the NRC's FY 2001 budget authority. In order to meet the requirements to assess and collect the fees by September 30, 2001, this final rule must be published by June 15, 2001.

Please note that in order to meet the expedited schedule for this final rule, we are providing each addressee a separate concurrence copy. Please provide your concurrence as quickly as possible, but no later than Noon, Wednesday, May 30, 2001.

If you cannot meet this schedule or have any questions, please contact Glenda Jackson on 415-6057. Thank you for your assistance in this matter.

Attachment: As stated

cc: D. Lee, OIG  
H. Bell, OIG  
S. Reiter, OCIO  
B. Hayden, OPA

OYC

Addressees - Memorandum dated May 24, 2001

SUBJECT: FINAL NOTICE OF RULEMAKING – 10 CFR PARTS 170 AND 171 –  
FEE RECOVERY FOR FY 2001

Mail Stop:

William D. Travers, Executive Director for Operations	O-16	E15
Janice D. Lee, Director, Office of International Programs	O-4	E5
Paul Lohaus, Director, State and Tribal Programs	O-3	C10
Michael L. Springer, Director, Office of Administration	T-7	D57
Trip Rothschild, Deputy Assistant General Counsel/ Legislative Counsel, Office of the General Counsel	O-15	D21
Marty Virgilio, Director, Office of Nuclear Material Safety and Safeguards	T-8	A23
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation	O-5	E7

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)," 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>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.

*K.* 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.

✓  
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,

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.

3e. 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 consideration 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. 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

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.

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 170 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

[Post-com. copy insert]

**From:** Glenda Jackson  
**To:** CMh; tbr  
**Date:** 5/25/01 2:17PM  
**Subject:** Comment. One fuel facility licensee commented that the proposed fee increase for fuel facilities w

After spending a few minutes to be sure I had covered everything, I realized that I had not specifically addressed USEC's comment. The following is my redraft of Comment and responses for Item 6, Annual fees for Fuel Facilities, which starts at the bottom of page 29 on the copy I gave you yesterday for concurrence. Since I really feel brain dead today, I would appreciate your quick read and comments, so I can fix it and send it out to the offices as an addendum to the concurrence package I gave them yesterday--I'd like to get it to them this afternoon if possible(particulary NMSS and EDO).

6. Annual Fees for Fuel Facilities

*Comment.* One fuel facility licensee commented that the proposed fee increase for fuel facilities would result in a financial burden that counteracts the cost control and reduction efforts that are being implemented by licensees in the class in order to effectively compete in world markets. The commenter also indicated that the proposed rule did not provide the basis for the increase in fuel facility budgeted costs and therefore it was difficult to determine if they are fair and equitable. Another fuel facility licensee referenced its March 13, 2001, request for a downgrade of its license and a reduction in the annual fee, and its March 29, 2001, request for a license amendment to reflect certain discontinued operations for purposes of downgrading the license. The commenter stated that as a result of their request, the fee rule should reflect the downgrade of the license from Category 1.A.(1)(b) to Category 1.A.(2)(a) and the FY 2001 annual fee should be prorated accordingly.

*Response.* The rebaselined annual fees for FY 2001 have been established based on the budgeted costs allocated to each class of licensees, less the estimated Part 170 collections and other adjustments for each class. The FY 2001 annual fees decreased for many categories of licensees compared to FY 2000, and increased for others. The NRC recognizes that the FY 2001 annual fees may have an adverse impact on those classes of licensees with annual fee increases. However, the rebaselined fees represent a fair and equitable allocation of NRC's FY 2001 budgeted costs to the various classes of licensees. The work papers supporting the proposed rule and this final rule show in detail the allocation of the budgeted costs for each planned accomplishment within the NRC's major programs to the various classes of licensees, and how the fees are calculated. As the NRC stated in the proposed rule (66 FR 16982, March 28, 2001), the work papers for the proposed rule are available in ADAMS, and during the 30-day comment period they were also available in the PDR for review. As shown in the ADDRESSES section, the work papers for this final rule are also available in ADAMS, and will be available in the PDR for review for a period of 90 days from the date this final rule is published in the Federal Register.

Cost control measures that a class of licensees might take do not affect the amount of the budget that the NRC is required to recover from that class through annual fees. Similarly, as the NRC has indicated in several previous fee rulemakings, the NRC does not set fees based on factors such as size, ability to pay, or other economic factors. In order to meet the requirements of OBRA-90, the NRC is unable to reduce the fees assessed to one class of licensees without increasing the fees assessed to other classes. Therefore, as stated previously, the NRC has only given consideration to the effects it is required to consider by law. As reflected in the Regulatory Flexibility Analysis, Appendix A to this final rule, the NRC has determined that a maximum annual fee for small entities strikes a balance between the fee recovery requirements of OBRA-90, as amended, and the requirement of the Regulatory Flexibility Act to consider means to reduce the impact of the fees on small entities.

In FY 1995, after notice and comment rulemaking, the NRC established the current methodology for determining annual fees for fuel facilities. This methodology results in the reasonable grouping of fuel facility licenses into fee categories according to the licensed operations and the level, scope, depth of coverage, and rigor of generic regulatory programmatic efforts. The programmatic efforts reflect the

safety and safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). A matrix depicts the categorization of the fuel facility licenses based on these factors.

The NRC has modified the matrix based on the notification referenced by one commenter that, prior to March 31, 2001, it had permanently ceased certain licensed operations. The revised matrix reflects the licensee's cessation of conversion of uranium hexafluoride (UF<sub>6</sub>) to uranium oxide (UO<sub>2</sub>) and removal of the remaining UF<sub>6</sub> from the facility prior to March 31, 2001. The NRC has determined, however, that the reduced activities do not diminish the licensee's total safety and safeguards effort factors and the commensurate generic regulatory program to the extent that it will place the license in the next lower fee category. The NRC will respond separately to the specific issues raised in the commenter's March 13, 2001, letter requesting that the license be placed in a lower fee category.

The revised matrix results in a redistribution of the safety and safeguards costs among the fuel fabrication categories. Accordingly, the annual fees for licensees in the fuel facility categories in this final rule have changed from the amounts shown in the proposed rule. The final annual fees for the various fuel facility categories also reflect an increase in estimated Part 170 collections for the fuel facility class for FY 2001 compared to the proposed rule. The final annual fees for the various fuel facility categories are shown in §171.31.

D.Other Issues.            1. NRC's Budget.

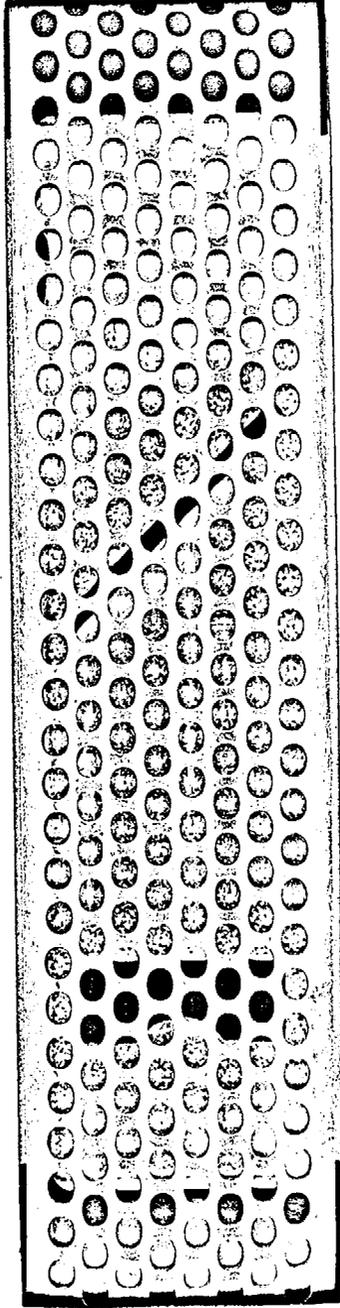
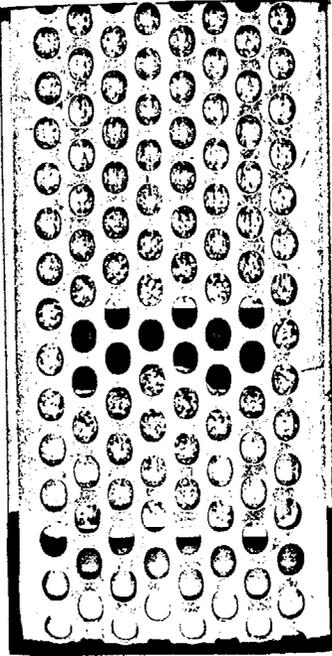
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effective June 20, 1984 (and contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1985) and the final rule effective July 2, 1990 (and contained in the 10 CFR, parts 51 to 199, edition revised as of January 1, 1991), but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

<sup>3</sup> Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

<sup>4</sup> Fees will not be assessed for requests/reports submitted to the NRC --

(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

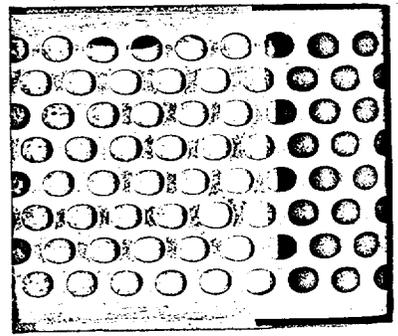
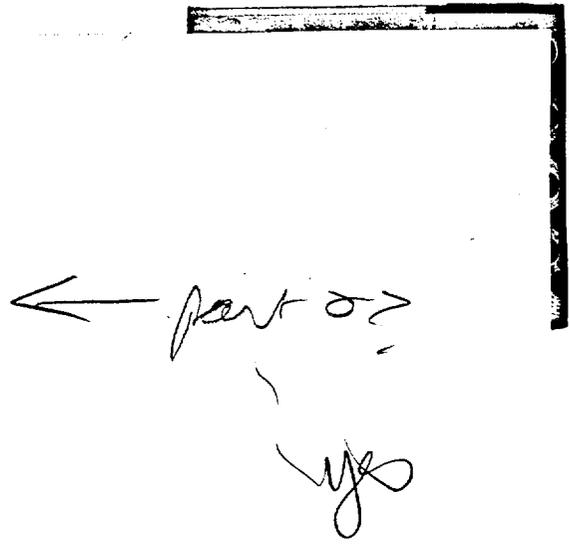
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<sup>3</sup> Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in §170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the final rule effective June 20, 1984 (and contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1985) and the final rule effective July 2, 1990 (and contained in the 10 CFR, parts 51 to 199, edition revised as of January 1, 1991), but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.



<sup>4</sup> Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

<sup>5</sup> Fees will not be assessed for requests/reports submitted to the NRC --

(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 re-analysis 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 the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

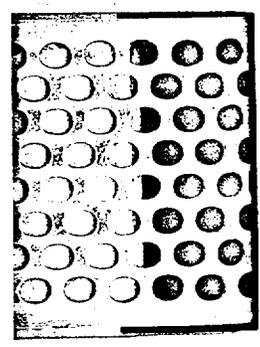
Chapter

nder Part 31 of this chapter.....N/A<sup>13</sup>

sal and processing:

licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.....N/A<sup>5</sup>

licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose



under Part 31 of this chapter.....N/A<sup>13</sup>



4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.....N/A<sup>5</sup>

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose

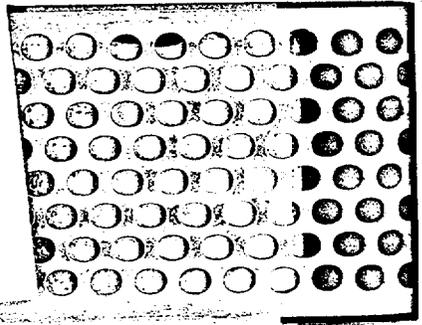
all entities, it would result in an increase in FY 2000, approximately 35 percent of the small entities for the lower tier small entity fee. The NRC annual fee for small entities with relatively low gross revenues for all governmental jurisdictions with a population of less than 35 employees that have an average of less than 35 employees. The impact of the annual fees to a significant number of

examine the small entity fees every two years, in the annual review of fees as required by the CFO Act, instead of as indicated in the FY 2000 fee rule. The annual cost of amendments, renewals, and inspections. The annual fees are rebaselined every three years, but may be rebaselined every two years only when the annual fees are significantly higher than the previous year. The annual fee schedule for the re-examinations and any potential changes to annual fees every two years, on the same schedule as the current schedule, provides a routine, predictable schedule and allows for changes to these fees might occur. Therefore, the NRC will continue to review the annual fees in FY 2003.

Consider:  
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must be paid by other NRC licensees in order to meet the requirements of OBRA-90, as amended, that NRC must recover most of its 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. For FY 2000, approximately 35 percent of the small entities qualifying for reduced annual fees qualified for the lower tier small entity fee. The NRC believes that maintaining a single lower tier annual fee for small entities with relatively low gross annual receipts of less than \$350,000, for small governmental jurisdictions with a population of less than 20,000, and for manufacturing entities that have an average of less than 35 employees continues to provide a further reduction to the impact of the annual fees to a significant number of small entities.

In the future the NRC plans to re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, at a maximum, annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur. Therefore, the NRC plans to re-examine the small entity fees in FY 2003.

IV. Summary

(widow line?)