



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

May 21, 2001

MEMORANDUM TO: Glenda Jackson
Office of the Chief Financial Officer
Michael T. Lesar
FROM: Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration
SUBJECT: REVIEW OF DRAFT FINAL FY 2001 FEE RULE

The Rules and Directives Branch has reviewed the draft final rule establishing the licensing, inspection, and annual fees charged to NRC applicants and licensees. We have attached a marked copy of the package that presents our comments.

The texts of Footnote 2 on pp. 77-78 and Footnote 3 on p. 95 of the draft rule should be altered (in accordance with our inserts) to clarify the CFR references included.

If you have any questions concerning this matter, please contact me at 415-7163 (MTL) or Victoria Voytko 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).

*If possible, provide access for
numbers for final work papers
before publication*

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. 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.

*If you do not have access to
ADAMS or if there are problems
in accessing the documents located in
ADAMS, contact the PDR.*

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 20852-2736.⁸ nl.gov)

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

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Responses to Comments
- III. Final Action

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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 new licenses, the review of applications for renewal of existing licenses, and the review of requests for license amendments. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

II. Responses to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to its licensees and applicants for FY 2001 on March 28, 2001 (66 FR 16982). Although the comment period ended on April 27, 2001, the NRC evaluated the 13 comments which were received by the close of business on May 7, 2001. Many of the comments were similar in nature. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

and NRC's Responses

The comments are as follows:

A. Legal Issues.

1. Information provided by NRC in Support of Proposed Rule.

Comment. One commenter urged the NRC to provide licensees and the public with a more detailed explanation of the specific activities and associated costs that form the basis for the Part 171 annual fees, including detailed information on the outstanding major contracts, their purpose, and their costs. The commenter stated that to enable stakeholders to provide meaningful comment on the proposed rule, the NRC should provide sufficient detail on the costs associated with each component of reactor regulation and other generic costs. The commenter indicated that this more detailed information would allow licensees and the public to provide more effective feedback and comment on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility. ✓

Response. The NRC believes that commenters were provided ample information on which to base constructive comments on NRC's proposed revisions to Parts 170 and 171. Consistent with the requirements of OBRA-90, the proposed fees were developed to recover approximately 98 percent of the NRC's FY 2001 budget authority from the various classes of licensees. In addition to the descriptions of the types of activities included in the proposed fees 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 Document Access and Management System (ADAMS) for public examination. 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 ✓

include accession numbers
for proposed work papers

include accession number

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 as required by OBRA-90, as amended. Therefore commenter's suggestions concerning public comments on NRC's regulatory activities and fiscal responsibilities are not addressed in this final rule.

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C. Specific Part 170 Issues.

1. Hourly Rates.

Lower case ✓

COMMENT. Some commenters opposed the \$144 proposed hourly rate for the materials program. *[As in]* *[Received]* Similar to comments from the uranium recovery industry on the issue in previous rulemakings, the commenters stated that the hourly rate is excessive, is more than the

{fee schedule ✓}

professional hourly rates charged by national consulting firms, and should be substantially reduced.

lower cost
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 informational 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. 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 for fee billable 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, 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.

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Response. The NRC's 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 be recovered through Part 170 fees assessed to the recipient of that service than through annual fees assessed to the licensees in the class subject to annual fees.

Contrary to the commenter's claim, generic activities conducted by PMs are not recovered through Part 170 fees. Generic activities are those NRC activities that broadly benefit classes or subclasses of licensees. Examples of generic activities, as stated in the FY 1999 final rule and reiterated in the FY 2000 final rule (*64 FR 31451; June 10, 1999, and 65 FR 36947; June 12, 2000, respectively*), include rulemaking and development of generic guidance documents. General activities such as training, general correspondence, attending staff meetings, coordination with and support to other offices, and processing documents into the Agencywide Document Access and Management System (ADAMS) are not generic activities. In responding to uranium recovery industry comments in the FY 2000 final rule, the NRC listed

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these examples of the types of PM activities that are recovered through PM Part 170 fees. The examples provided by the NRC in the FY 1999 and FY 2000 fee rules of PM activities to be billed under Part 170 and those excluded from Part 170 billing were not intended to be complete lists. For example, in addition to the listed activities excluded from Part 170 PM fees, the NRC also excludes from Part 170 fees for PM activities related to activities for which Part 170 fees are otherwise not assessed, such as contested hearings, responses to petitions, and responding to allegations.

The PM activities charged under Part 170 are general activities and activities specifically related to the site, such as licensing reviews. As the commenter indicted, the general activities billed under Part 170 include time that a PM spends in reporting to the NRC's accounting system. General activities are part of the costs to the agency of providing the PM services, and the NRC continues to believe that the costs are most appropriately recovered from the licensees benefitting from the PM services.

The concept that the assessment of Part 170 fees for PM activities increases the costs to the uranium recovery class is incorrect. PM charges might result in an increase for a particular licensee at a particular point in time; however, billing for PM time under Part 170 does not cause an increase, or a decrease, in the total fees assessed to the class. Based on the OBRA-90 fee recovery requirements, all budgeted costs allocated to a class that are not recovered through Part 170 fees paid by the class are recovered through annual fees assessed to those licensees in the class subject to the annual fees. Thus, all budgeted costs allocated to a class are paid by the class, either through Part 170 fees or Part 171 fees.

Although on the surface it may appear to be more fair to recover the PM costs through annual fees, the end result would not necessarily be equitable to those licensees paying the annual fees. If, for example, the NRC were to discontinue assessing Part 170 fees to uranium recovery licensees for PM activities, and everything else remained the same, uranium recovery licensees subject to annual fees would pay more in total costs because those licensees in decommissioning 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, the 11 licensees authorized to operate would be assessed an additional \$322,000 in annual fees.

The NRC finds no basis to change its policy 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. However, the Office of Nuclear Materials Safety and Safeguards has recently determined that PMs will no longer be required for certain uranium recovery licenses unless there is a major action ongoing with that license. While this revised policy may, at times, reduce the Part 170 fees for some individual licensees, the costs for these staff members previously recovered through Part 170 fees will, of necessity, be recovered through annual fees. The impact of this revised policy for assigning PMs on the FY 2001 annual fees for the uranium recovery class is minimal because it occurred late in the fiscal year.

meet the criteria because, due to the passage of time, they may not be familiar with the intent of the fee waiver provisions.

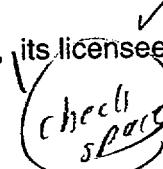
As the statements of consideration for the 1994 fee rule clearly indicate, the fee waiver provisions of criterion 3 of Footnote 4 to §170.21 and criterion(c) of Footnote 5 to §170.31 apply to reports submitted for the purpose of supporting NRC's generic regulatory improvements, such as development of generic guidance and regulations and resolution of safety issues applicable to a class of licensees. The NRC has denied fee waiver requests for reports/requests that were not submitted for the purpose of NRC's regulatory improvements, such as those submitted for the purpose of the industry's generic actions. Although the NRC may realize some 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, and 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 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 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 the NRC's Regulatory Information Tracking System (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 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.

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.

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Specific Part 171 Issues.

1. 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

Comment. Two comments were received concerning NRC's proposal to discontinue mailing 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. One of the commenters indicated that the proposal would result in a burden on the licensees because they would have to obtain the form by other means, and that many of the "mom and pop" operations may not have access to the Internet. This commenter believes that, because only a small percentage of the total number of small entity forms submitted are filed by licensees who do not qualify for small entity status, the proposal would unfairly penalize those who do qualify as a small entity. The commenter stated that because NRC requires the Form, the NRC is obligated to supply it by a means that is accessible to all licensees. The commenter suggested that instead of discontinuing mailing the form with the annual fee invoices, the Form be modified to make it clear who qualifies and who does not qualify as a small entity.

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,

*of a direct
licensee*

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 CFR 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 it was enclosed with the annual fee invoice. It is for this reason that the NRC proposed to discontinue including NRC Form 526 with each annual fee invoice.

Licensees who file an improperly completed NRC Form 526 do so under penalty of perjury, and could become the subject of an NRC investigation. This could lead to fines, imprisonment, or both, and the revocation or suspension of the license. The NRC believes that there is merit to trying to minimize the number of ~~improperly filed forms, the resulting risk to the~~ ^{drain on} licensees, and the associated NRC resources. The NRC acknowledges, however, that ~~not mailing NRC Form 526 with each annual fee invoice may place additional burdens on those licensees who do qualify as a small entity, as well as the NRC staff.~~

The NRC is adopting the proposed change. However, in order to minimize the impact on NRC licensees and NRC staff resources, implementation of the revised policy of not mailing NRC Form 526 with each annual fee invoice will be phased in. ~~Because of the potential burdens to NRC licensees and the resulting impact on NRC staff resources to respond to inquiries and supply the forms on an individual basis, the NRC is not adopting the proposed policy of eliminating the form from the packet of information included with the materials licensees' annual fee invoices. The NRC will, however, continue to consider alternatives to minimize the number of improperly filed Forms. One alternative the NRC will evaluate, for example, is sending the forms only to those licensees who qualified as a small entity for the previous year. Any changes resulting from these efforts will be included in the FY 2002 fee rule.~~

Licensees who have questions about their status as a small entity or about the process for filing the NRC Form 526 should contact the NRC's license fee staff at 301-415-7554, or e-mail the fee staff at fees@nrc.gov.

3. Annual Fees For Uranium Recovery Licensees.

Comment. The NRC received 5 comments concerning the annual fees charged to NRC's uranium recovery class of licensees. While most of the commenters acknowledged the reduction in annual fees for the uranium recovery class compared to FY 2000, many stated that the reduction does not make up for an increase in total charges over the last two years and does not go far enough. Some commenters are concerned with what they believe is a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory

oversight program, and the benefit derived from that program. Several commenters indicate that sites that are on standby or awaiting approval of reclamation plans should not be subject to annual fees because they require minimal NRC oversight. Some commenters stated that the decision to cease operations, go into standby, or begin decommissioning ^{is} ~~are~~ rarely at the licensee's discretion, but rather ^{is} ~~are~~ based on the realities of the uranium market. Several commenters stated that the NRC must find an equitable way of dealing with the decreasing number of licensees in the uranium recovery area, which could result in the remaining few paying for the entire program.

Some commenters referred to the April 10, 2001, Commissioner's 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. 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 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 decided against basing 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.

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 was 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 recovery amount is 90 percent by FY 2005. This results in a reduction of \$9.3 million in the total fees to be assessed to NRC licensees in FY 2001, a reduction which is shared by all licensees, including uranium recovery licensees.

The NRC has previously considered whether licensees in a standby status or awaiting approval of their reclamation plans should be granted a full or partial exemption from annual fees based on their non-operating status. For example, the NRC addressed this issue in response to comments on the FY 1991 rule (56 FR 31461; July 10, 1991) and further elaborated on it in 1995 in response to a petition for rulemaking from the American Mining Congress (now the National Mining Association) (60 FR 20918; April 28, 1995). The Commission has concluded that the current policy of assessing annual fees based on whether a licensee holds a valid NRC license that authorizes possession and use, whether or not the facility is actively operating or in a standby status, represents the fairest option available under current legislation. This policy is based on the basic premise that the benefit the NRC provides a licensee is the authority to use licensed material. Whether or not to exercise that authority is a business decision of the licensee.

Based on the fee recovery requirements of OBRA-90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would increase the annual fees assessed to the remaining licensees. Providing such fee relief would only add to the effects of decreasing numbers of licensees on annual fees, which continues to be of concern to commenters. Licensees in a standby status continue to receive benefit from NRC's generic

guidance and rules applicable to the uranium recovery class of licensees and therefore should continue to pay annual fees.

Although the comments indicate that annual fees are assessed to certain licensees because of a failure on NRC's part to approve their reclamation plans, this is not the case. The NRC waives the annual fee for those licensees who have relinquished their authority to operate and have permanently ceased operations, as long as the notifications of such actions are filed by the dates provided in the fee regulations. The reclamation plans do not have to be approved by the NRC for the fee waiver to apply.

4. Quarterly Billing Schedule For Class I And Class II Licenses.

Comment. Two commenters supported the NRC's proposal to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees, regardless of the annual fee amounts.

Response. The NRC is modifying §171.19 in this final rule to establish a quarterly annual fee billing schedule for uranium mill licensees (Class I) and solution mining licensees (Class II). Because the annual fees for these licensees have been close to the \$100,000 threshold for quarterly billing, slight changes in the annual fees have resulted in frequent changes in their billing schedules. This change will provide these licensees with a consistent, predictable schedule for paying their annual fees.

5. Annual Fees for Power Reactors in Decommissioning.

The 32 percent increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since the last annual fee rebaselining in FY 1999. For example, compared to FY 1999, there were increases in budgeted costs allocated to the spent fuel storage/reactor decommissioning class for waste safety research, for spent fuel storage licensing and inspection activities, and for rulemaking. Recovering the costs associated with spent fuel storage and reactor decommissioning from operating power reactors, reactors in decommissioning if they have fuel on site, and those Part 72 spent fuel storage licensees who do not hold a Part 50 license is consistent with the intent of OBRA-90 that NRC's resources be allocated among licensees or classes of licensees, so that the licensees who require the greatest expenditure of the NRC's resources will pay the greatest annual fee.

Because these costs are budgeted for activities related to the spent fuel storage/reactor decommissioning class, there is no basis to limit the fee increases that are necessary to recover the budgeted costs from the class.

In addition to reactor licensees in decommissioning, operating reactors and Part 72 licensees that do not hold a Part 50 license will also be assessed the increased FY 2001 spent fuel storage/reactor decommissioning annual fee. The decrease in total FY 2001 annual fees for operating power reactors is due to reduced budgeted costs for the operating power reactor class compared to FY 1999.

6. Annual Fees for Fuel Facilities ✓

Comment. One fuel facility licensee referenced its March 13, 2001, request for a license amendment to delete certain commitments related to 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 NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) has confirmed that the commenter's subject application will result in the removal of certain authorizations from the license. The matrix used for purposes of determining annual fees for the fuel facility class has been modified to reflect the licensee's reduced activities. However, the reduced licensed activities do not result in a decrease in the FY 2001 annual fee for this licensee. The resulting safety and safeguards effort factors, although lower than before, are not low enough to place the license in the next lower fee category. In the matrix for the proposed fee rule, which is available in the work papers supporting the proposed rule, the total safety and safeguards effort factors for individual licensees in category 1.A.(1)(b), the higher fee category, is 28, while the total for the individual licensee in category 1.A.(2)(b), the lower fee category, is 11. The licensee's reduced activities result in a total effort factor of 22, which does not place the license in the lower category. Accordingly, this final rule does not reflect a change of fee category for the commenter's license. However, as noted in the section III, Final Action, the matrix has also been changed to reflect decreased activities for another fuel facility, which results in that licensee moving from fee category 1.A.(2)(1) to fee category 1.A.(2)(b) and therefore paying a lower fee for FY 2001 than what was reflected in the proposed rule. As a result, the annual fee for each of the remaining fuel facility licensees has increased from the proposed rule.

(the amount shown in

concerning NRC's budget and use of NRC resources. The NRC's budgets are submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2001 is \$487.3 million, of which \$21.6 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. In the proposed rule, the total budget was shown as \$487.4 million. However, a recission reduced the total budget authority by approximately \$75.0 thousand. However, the recission did not affect the fee recovery portion of the budget, and therefore, the fee recovery amounts have not changed from the proposed rule. Based on the 98 percent fee recovery requirement, the NRC must collect approximately \$453.3 million in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2001 is \$6.3 million more than the amount estimated for recovery in FY 2000. However, the FY 2001 fee recovery amount is further reduced by a \$3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published. This leaves

approximately \$450.2 million to be recovered in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$112.1 million will be recovered in FY 2001 from Part 170 fees and other offsetting receipts. The NRC also estimates a net adjustment for FY 2001 of approximately \$0.4 million for payments received in FY 2001 for FY 2000 invoices. The remaining \$337.7 million is to be recovered through the Part 171 annual fees, compared to \$341.0 million for FY 2000.

Table I summarizes the budget and fee recovery amounts for FY 2001.

TABLE I - Budget and Fee Recovery Amounts for FY 2001

[Dollars in Millions]

| | |
|--|--------------------|
| Total Budget Authority | \$487.3 |
| Less NWF | - 21.6 |
| Less General Fund | <u>- 3.2</u> |
| Balance | \$462.5 |
| Fee Recovery Rate for FY 2001 | <u>x 98.0%</u> |
| Total Amount to be Recovered For FY 2001 | <u>← \$453.3</u> ✓ |
| Less Carryover from FY 2000 | <u>- 3.1</u> |
| Amount to be Recovered Through Fees and Other Receipts | \$450.2 |
| Less Estimated Part 170 Fees and Other Receipts | <u>-112.1</u> |
| Part 171 Fee Collections Required | \$338.1 |

Part 171 Billing Adjustments

| | |
|---|------------|
| Unpaid FY 2001 Invoices (estimated) | 3.2 |
| Less Payments Received in FY 2001 for Prior Year Invoices (estimated) | <u>3.6</u> |
| Subtotal | ← - 0.4 ✓ |
| Adjusted Part 171 Collections Required | \$337.7 |

The final FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, 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 to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. For these licensees, payment will 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 final FY 2001 rule will be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule will be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

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. This 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 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 required to register certain types of generally licensed devices. These final revisions are further discussed below.

The final amendments are as follows:

1. Hourly Rates

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 streamlining the process.

A conforming revision to 10 CFR 150.20(b)(2) has also been made to reflect this change.

4. Fees for General License Registrations

The NRC has established an application of \$450 for registrations filed in accordance with 10 CFR 31.5 for certain generally licensed devices. 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 a registration process under 10 CFR 31.5 for certain generally licensed 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 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 before the requirement for the registration fee goes into effect.

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 to explicitly require that certain general licensees register their generally licensed devices with the NRC each year 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. The \$450 registration fee is based on the estimated number of registrants, current resource estimates, and the FY 2001 FTE rate. The registration fee will be imposed beginning with the first re-registration of devices currently in use. The registration fee will be required for each annual re-registration of the devices, and for all new registrations of devices acquired after the registration program is fully implemented.

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 this FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

5. Fee Waivers

To clarify the intent of the fee waiver provision for certain reports filed with the NRC for review and approval, 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 review and approval of the reports must support NRC's generic regulatory improvements or efforts. In addition, criteria 1., 2., and 3. of Footnote 4 to §170.21 have been redesignated as criteria (a), (b), and (c).

In the recent past, several requests for Part 170 fee exemptions have been filed by licensees and various organizations who submit topical reports or other documents to the NRC for review. 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, several fee waiver requests were based on 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) 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

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 results in a more precise relationship between annual fees and NRC costs of providing services. It thus constitutes one means to fairly and equitably allocate costs among the NRC's licensees.

The annual fees in §§171.15 and 171.16 are revised 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 \$337.7 million, compared to \$341.0 million for FY 2000.

The FY 2001 annual fees reflect an increase for some categories of licensees and decrease for others from the previous year. The decreases in annual fees range from approximately 0.2 percent for operating power reactor licensees (including the spent fuel storage/reactor decommissioning annual fee), to approximately 29.0 percent for uranium recovery licensees. The increases in annual fees range from approximately 2.6 percent for materials licenses authorizing distribution of radiopharmaceuticals, to approximately 165.2 percent for transportation quality assurance program approvals authorizing use only. The proposed rule reflected an increase of approximately 6.7 percent in the annual fees for fuel facility licensees over FY 2000 fees. Based on the downgrading of one fuel facility license for FY 2001, the final annual fees for the fuel facilities have been recalculated, resulting in an increase of approximately 7.5 percent compared to FY 2000. The revised annual fees for the fuel facility subcategories are shown in Table VII and in §171.16.

the transportation class, less the amount allocated to DOE for its certificates of compliance, between the quality assurance approvals authorizing use only and those that authorize use and fabrication/design. As a result of the decrease in budgeted costs for Part 71 vendor inspections, a larger percentage of the total annual fee amount for the transportation class has been allocated to quality assurance approvals authorizing use only than in the past.

Table III below shows the rebaselined annual fees for FY 2001 for representative categories of licensees.

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TABLE III - Rebaselined Annual Fees for FY 2001

| <u>CLASS OF LICENSEES</u> | <u>FY 2001</u> |
|--|-------------------|
| | <u>ANNUAL FEE</u> |
| Power Reactors (including Spent Fuel Storage/ Reactor Decommissioning annual fee) | \$2,809,000 |
| Spent Fuel Storage/Reactor Decommissioning | 275,000 |
| Nonpower Reactors | 74,000 |
| High Enriched Uranium Fuel Facility | 3,577,000 |
| Low Enriched Uranium Fuel Facility | 1,199,000 |
| UF ₆ Conversion Facility | 510,000 |
| Uranium Mills | 94,300 |
| <u>Transportation</u> | |
| Users/Fabricators | 62,500 |

As shown in Table IV, the total surcharge cost allocated to the various classes of licensees for FY 2001 is \$48.3 million. The NRC has continued to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licensees. The surcharge costs allocated to each class are included in the annual fee assessed to each licensee. The FY 2001 surcharge costs allocated to each class of licensees are shown in Table V.

TABLE V - Allocation of Surcharge

| | LLW Surcharge | | Non-LLW Surcharge | | Total Surcharge | | |
|-----------------------|----------------|------------|-------------------|------------|-----------------|-----|---|
| | <u>Percent</u> | <u>\$M</u> | <u>Percent</u> | <u>\$M</u> | <u>\$M</u> | | |
| Operating Power | 74 | 1.3 | 79.1 | 36.9 | 38.2 | | |
| 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 | 0.4 | 0.4 | |
| TOTAL SURCHARGE | | 1.7 | 46.6 | 48.3 | | | |

*Include
licensee
numbers*

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 fuel cycle facilities. For these licensees, payment will 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 will be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2000 rate in FY 2001. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2001 final rule will be billed for the annual fee at the FY 2001 rate during the anniversary month of the license, and payment will be due on the date of the invoice.

A. Fuel Facilities

determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licensees are summarized in the table below.

THE FOLLOWING TABLE TO BE REVISED IF FRAMETOME REDUCTION CONFIRMED

TABLE VI - Effort Factors for Fuel Facilities

| <u>Facility type</u> | <u>Number of Facilities</u> | <u>Effort Factors</u> | |
|----------------------------------|-----------------------------|-----------------------|-------------------|
| | | <u>Safety</u> | <u>Safeguards</u> |
| High Enriched Uranium | 2 | 91 (33.1%) | 76 (54.7%) |
| Fuel | | | |
| Enrichment | 2 | 70 (25.5%) | 34 (24.5%) |
| Low Enriched Uranium | 4 | 88 (32.0%) | 24 (17.3%) |
| Fuel | | | |
| UF₆ Conversion | 1 | 8 (2.9%) | 3 (2.2%) |
| Limited Operations | | 12 (4.4%) | 0 (0%) |

The FY 2001 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately \$1.5 million. Of this amount, \$654,000 will be assessed to DOE to recover the costs associated with DOE sites under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining \$864,000 will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The costs are allocated to the individual uranium recovery licensees in these categories based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999).

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed and is as follows: ✓ ✓

- (1) The methodology identifies three categories of licensees: conventional uranium mills (Class I facilities), solution mining uranium mills (Class II facilities), and mill tailings disposal facilities (11e(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents, etc.);
- (2) The matrix relates the category and the level of benefit by program element and subelement;
- (3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;
- (4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of uranium recovery licensees are as follows.

TABLE VIII - Weighted Factors for Uranium Recovery Licenses

| <u>Facility Type</u> | <u>Number of ↓ Facilities</u> | <u>Level of Benefit</u> | | |
|---|---------------------------------------|----------------------------------|---------------------|----------------|
| | | <u>Category ↓ Weight</u> | <u>Total Weight</u> | <u>Value</u> |
| | | | | <u>Percent</u> |
| 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 |

recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance that it holds. Of the remaining \$2.8 million, approximately 26 percent is allocated to the 83 quality assurance plans authorizing use only and the 36 quality assurance plans authorizing use and design/fabrication. The remaining 74 percent is allocated only to the 36 quality assurance plans authorizing use and design/fabrication. This results in an FY 2001 annual fee of \$6,100 for each of the holders of quality assurance plans that authorize use only, and an FY 2001 annual fee of \$62,500 for each of the holders of quality assurance plans that authorize use and design/fabrication.

3. Small Entity Annual Fees

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. The NRC revised the small entity fees in FY 2000, for the first time since they were introduced in FY 1991 and FY 1992, based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and on changes that had occurred in the fee structure for materials licensees over time (65 FR 36956, 36957). 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 NRC'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.

In the future the NRC plans to re-examine 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.

DELETE THE FOLLOWING?????

No... discussion off.

4. Other Amendments

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 will phase out mailing ~~the Form~~ with each annual fee invoice. Instead, licensees will be able to access NRC Form 526 on the NRC's external web site at <http://www.nrc.gov>. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 will be able to complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 can 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.

In summary, the NRC has --

1. Established new rebaselined annual fees for FY 2001;
2. Revised §171.16(c) to delete the sentence indicating that NRC will mail NRC Form 526 with each annual fee invoice.
4. Determined that the small entity fees will be re-examined every two years, on the same schedule as the biennial review of fees required by the CFO's Act.

IV. Voluntary Consensus Standards

RDB INSERT #1

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule updating the fee schedule will be determined at the professional rates in effect at the time the service was provided. 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 Sec. 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 Sec. 170.20.

*(Alter this sentence in accordance w/ RDB Insut #7
to clarify references to 10 CFR)*

established by the June 20, 1984, and July 2, 1990, rules 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.

³ 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.

⁴ 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

(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.

3. Byproduct material:

- A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application \$6,700

- B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application \$2,200

- C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D) ;

✓

Application \$8,700

- D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of

radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4);



Application \$2,400

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application \$1,700

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes;

✓
9:

✓

Application \$3,400

- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

✓
9:

✓

Application \$8,000

| | | |
|-----|--|-----------|
| B. | Inspections related to spent fuel storage cask Certificate of Compliance | Full Cost |
| C. | Inspections related to storage of spent fuel under §72.210 of this chapter | Full Cost |
| 14. | Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter: | |
| | Licensing and inspection | Full Cost |
| 15. | Import and Export licenses: | |
| | Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite. | ✓ ✓ |
| A. | Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries. | ✓ ✓ |
| | Application - new license | \$9,400 |
| | Amendment | \$9,400 |

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country. ✓ : ✓

| | |
|---------------------------------|---------|
| Application - new license | \$5,500 |
| Amendment | \$5,500 |

- C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act. ✓ :

| | |
|---------------------------------|---------|
| Application - new license | \$1,700 |
| Amendment | \$1,700 |

- D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. ✓ :

| | |
|---------------------------------|---------|
| Application - new license | \$1,200 |
|---------------------------------|---------|

Amendment \$1,200

E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments. ✓ ✓

Amendment \$220

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20. ✓ ✓

Application \$1,400

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

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

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3 * * *. 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. * * * * *

(e) Generally licensed device registrations under 10 CFR 31.5. Submittals of registration information must be accompanied by the prescribed fee.

² Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

³ 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 applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, 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.

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⁴ 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.

⁵ 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
- (c) 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.

10. Section 170.41 is revised to read as follows:

§170.41 Failure by applicant or licensee to pay prescribed fees.

If the Commission determines that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee. The Commission may issue an order with respect to licensed activities that the Commission determines to be appropriate or necessary to carry out the provisions of this part, Parts 30, 31, 32 through 35, 40, 50, 61, 70, 71, 72, 73, and 76 of this chapter, and of the act.

PART 171 -- ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

11. The authority citation for Part 171 is revised to read as follows:

Authority: sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); 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).

12. In Section §171.5, the definition of *Materials License* is revised to read as follows:

§171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued or granted by the NRC under the regulations in 10 CFR Parts 30, 31 through 36, 39, 40, 61, 70, 71, 72, and 76.

* * * * *

13. In §171.15, paragraphs (b), (c), (d), and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2001 annual fee for each operating power reactor which must be collected by September 30, 2001, is \$2,809,000.

(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 are⁹ ✓

(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 conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would

Test reactor \$74,000

(c) ✓

14. In §171.16, paragraphs (d) and (e) are revised to read as follows:

^

§171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

| <u>Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)</u> | <u>Maximum Annual Fee Per Licensed Category</u> |
|---|---|
| \$350,000 to \$5 million | \$2,300 |
| Less than \$350,000 | \$500 |

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

FOR THE FOLLOWING, IS IT OK TO LEAVE OFF THAT WE WILL SEND THE FORM???

(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. The NRC will include a copy of NRC Form 526 with each annual fee invoice

sent to a licensee. NRC Form 526 can also 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 also 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, by. 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>

(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

**(b) Low Enriched Uranium in
Dispersible Form Used for
Fabrication of Power Reactor
Fuel:**

Combustion Engineering

(Hematite) SNM-33..... \$1,191,000

General Electric Company

SNM-1097 ← \$1,191,000

Siemens Nuclear Power

SNM-1227.....\$1,191,000

Westinghouse Electric Company

SNM-1107.....\$1,191,000

**(2) All other special nuclear materials
licenses not included in Category 1.A.(1)
which are licensed for fuel cycle activities.**

(a) Facilities with limited operations:

Framatome Cogema SNM-1168.....\$468,000

(b) All Others:

General Electric SNM-960.....\$340,000

| | | |
|----|---|-------------------|
| B. | Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)..... | N/A ¹¹ |
| C. | Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers..... | \$1,400 |
| D. | All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A(2) /..... | \$3,300 |
| E. | Licenses or certificates for the operation of a uranium enrichment facility..... | \$2,211,000 |

2. Source material:

| | | |
|-------|--|-----------|
| A.(1) | Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride..... | \$510,000 |
|-------|--|-----------|

decommissioning, decontamination, reclamation,
or site restoration activities under 10 CFR
Parts 30, 40, 70, 72, and 76 of this chapter.....N/A⁷

15. Import and Export licenses.....N/A⁸

16. Reciprocity.....N/A⁸

17. Master materials licenses of broad scope issued to
Government agencies.....\$306,000

18. Department of Energy:

A. Certificates of Compliance.....\$1,107,000¹⁰

B. Uranium Mill Tailing Radiation
Control Act (UMTRCA) activities.....\$654,000

¹Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2000, and permanently ceased licensed activities entirely by September 30, 2000. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the

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

¹¹ See 10 CFR 171.15(c).

¹² See 10 CFR 171.15(c).

¹³ No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR Part 170 fees.

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

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licensees (e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act).

all activities not directly attributable to an existing NRC licensee or class(es) of licensees

13. In §171.19, paragraphs (b) and (d) are revised to read as follows:

Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of \$3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed \$3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at \$1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the \$3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the \$1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the

entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from \$400 to \$500 in FY 2000.

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. The revision to the small entity fees in FY 2000 was the first change to the fees since they were introduced in FY 1991 and FY 1992. The revised fees were based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time. The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other 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.

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,

I include discussion regarding the suggestion for additional small entity fee tiers and the reasons for not instituting added tiers.

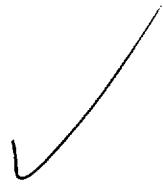
instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, at a maximum, annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. 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

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.

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ATTACHMENT 1 TO APPENDIX A

**U. S. Nuclear Regulatory Commission
Small Entity Compliance Guide
Fiscal Year 2001**