Would replace The section that begins on Page 30 (See USEC comment attached)

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

Response. The rebaselined annual fees for FY 2001 have been established based on the budgeted costs allocated to each class of licensees, less the estimated Part 170 collections and other adjustments for each class. The FY 2001 annual fees decreased for many categories or licensees compared to FY 2000, and increased for others. The NRC recognizes that the FY 2001 annual fees may have an adverse impact on those classes of licensees with annual fee increases. However, the rebaselined fees represent a fair and equitable allocation of NRC's FY 2001 budgeted costs to the various classes of licensees. The work papers supporting the proposed rule and this final rule show in detail the allocation of the budgeted costs for each planned accomplishment within the NRC's major programs to the various classes of licensees, and how the fees are calculated. As the NRC stated in the proposed rule (66 FR 16982, March

28, 2001), the work papers for the proposed rule are available in ADAMS, and during the 30-day comment period they were also available in the PDR for review. As shown in the ADDRESSES section, the work papers for this final rule are also available in ADAMS, and will be available in the PDR for review for a period of 90 days from the date this final rule is published in the Federal Register.

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

In FY 1995, after notice and comment rulemaking, the NRC established the current methodology for determining annual fees for fuel facilities. This methodology results in the reasonable grouping of fuel facility licenses into fee categories according to the licensed operations and the level, scope, depth of coverage, and rigor of generic regulatory programmatic efforts. The programmatic efforts reflect the safety and safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). A matrix depicts the categorization of the fuel facility licenses based on these factors.

The NRC has modified the matrix based on the notification referenced by one commenter that, prior to March 31, 2001, it had permanently ceased certain licensed operations. The revised matrix reflects the licensee's cessation of conversion of uranium hexafluoride (UF_6) to uranium oxide (UO_2) and removal of the remaining UF_6 from the facility prior to March 31, 2001. The NRC has determined, however, that the reduced activities do not diminish the licensee's total safety and safeguards effort factors and the commensurate generic regulatory program to the extent that it will place the license in the next lower fee category. The NRC will respond separately to the specific issues raised in the commenter's March 13, 2001, letter requesting that the license be placed in a lower fee category.

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

D. Other Issues.

1. <u>NRC's Budget</u>.

(8)

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April 27, 2001
GDP 01-0084

Secretary
U. S. Nuclear Regulatory Commission
Attention: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
Docket Nos. 70-7001 & 70-7002
USEC Comments on NRC Proposed Rule, "Revision of Fee Schedules; Fee Recovery for FY 2001," (66 FR 16982)

The United States Enrichment Corporation (USEC) appreciates the opportunity to provide comments on the NRC Proposed Rule, "Revision of Fee Schedules; Fee Recovery for FY 2001." The annual fees for the fuel facility class of licensees have substantially increased despite recent changes to the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) reducing the fee recovery rate from 100 percent to 98 percent for FY 2001. The NRC's description of the proposed action does not reveal the rationale behind why the FY 2001 budgeted costs to be recovered in fuel facility annual fees has increased over 6% while budgeted costs for almost all other classes of licensees have decreased. Without a clear understanding of the basis of these increased budget allocations, it is difficult to ascertain whether they are fair and equitable.

During the past year, USEC has undertaken major actions to reduce operating costs. These actions have included significant workforce reductions at our production facilities and headquarters and the commencement of enrichment cessation at the Portsmouth Gaseous Diffusion Plant. The NRC's proposed fee increase imposes a financial burden that counteracts our own cost control efforts. USEC is disappointed that the NRC continues to escalate fuel facility fees at a time when fuel facility licensees and certificate holders are implementing major cost control and reduction efforts in order to effectively compete in world markets.

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SECY-02

If you have any questions please contact Lisamarie L. Jarriel at (301) 564-3247.

Sincerely,

S. A. Toelle

Steven A. Toelle
Director, Nuclear Regulatory Affairs

cc: E. Leeds, NRC Special Projects Branch
P. Hiland, NRC Region III
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