



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

March 13, 2002

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

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

SUBJECT: OFFICE CONCURRENCE ON THE PROPOSED FY 2002 FEE RULE

The Office of Administration concurs, subject to the comments provided, on the proposed rule that would establish the licensing, inspection, and annual fees necessary to recover approximately 96 percent of the NRC's operating budget for FY 2002. We have attached a marked copy of the package that presents additional comments.

If you have any questions concerning this matter, please contact Michael T. Lesar, Chief, Rules and Directives Branch, ADM, at 415-7163 (MTL) or Cindy Bladey, ADM, at 415-6026 (CXB6).

Attachment: As stated

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678).

Comments may also be submitted 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.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/Reading-Rm/ADAMS.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.

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

rule would be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

The NRC, in proposing FY 2002 fees for uranium recovery licensees, is cognizant that the National Mining Association (NMA) has filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the fee schedules to waive all fees for uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NRC not only published the petition in the Federal Register for comment (66 FR 55604; November 2, 2001), but also mailed the Federal Register ^{Document} noticing the petition and inviting public comment to each of the NRC's more than 5000 licensees. The comment period expired on January 16, 2002. The NRC is now evaluating the comments it has received in response to this action. ✓

The Commission anticipates issuing its decision on the rulemaking petition before the projected promulgation of the final FY 2002 fee rule in June. Should the Commission decide to grant the rulemaking petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The additional fees to be distributed among other licensees could be between \$3.0 and \$4.0 million in FY 2002. In such a case, more than 85 percent of this sum would be allocated to power reactors based on the NRC's established method for allocating costs not attributable to those licensees paying annual fees. Thus, the NRC is inviting those who have arguments to place before the Commission that were not submitted in response to the November 2, 2001, Federal Register document requesting public comment on the petition to do so now.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, 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 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June 2002. In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule. ✓

The NRC is proposing to make changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

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

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates. Additionally, the NRC is proposing to revise part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in §170.20. These proposed rates would be based on the number of FY 2002 direct program full time equivalents (FTEs) and the FY 2002 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The proposed hourly rate for the reactor program is \$156 per hour (\$276,345 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The proposed hourly rate for the materials program (nuclear materials and nuclear waste programs) is \$152 per hour (\$269,451 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2001 final fee rule, the reactor and materials program rates were \$150 and \$144, respectively. The proposed increases are primarily due to the Governmentwide pay increase in FY 2002.

The method used to determine the two professional hourly rates is as follows:

- a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).
- b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II - FY 2002 Budget Authority to be Included in Hourly Rates

	Reactor <u>Program</u>	Materials <u>Program</u>
Direct Program Salaries & Benefits	\$117.0M	\$32.2M
Overhead Salaries & Benefits, Program Travel and Other Support	59.2M	15.6M
Allocated Agency Management and Support	<u>106.9M</u>	<u>29.0M</u>
Subtotal	\$283.1M	\$76.8M
Less offsetting receipts	<u>-0.1M</u>	<u>-0.00M</u>
Total Budget Included in Hourly Rate	\$283.0M	\$76.8M
Program Direct FTEs	1024.0	285.1
Rate per Direct FTE	\$276,345	\$269,451
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$156	\$152

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC 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. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to §170.21 and Footnote 5 to §170.31 and material in the definition of *Special Projects* in §170.3 concerning these types of requests and reports better fit in §170.11, Exemptions. *provide information that is more suitable for inclusion*

Therefore, the NRC is proposing to delete Footnote 4 to §170.21 and Footnote 5 to §170.31 and add the ^{revised} fee waiver provisions to the Exemption section as §170.11(a)(1). The NRC also proposes to remove the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in §170.3. ~~To further clarify the intent of~~

the fee waiver provisions, the NRC is proposing to modify the language that is currently in *those footnotes* criteria (c) of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31, which would *will be revised* become part of the exemption provision in §170.11(a)(1), to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, plans to use the submission for that purpose. The proposed modification would also clarify that the waiver provisions do not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in §170.5, fee exemption

requests should be made to the NRC's Chief Financial Officer, who will make the determinations in consultation with the appropriate program office. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the types of submissions that meet the fee waiver criteria and those that do not would be provided in §170.11(a)(1).

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

1. Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates;
3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees would be assessed for amendments and inspections related to the storage of GTCC Waste under part 72.
4. Add to §170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to §170.21 and Footnote 5 to §170.31 and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. The ^{se}subject Footnotes as well as material in the definition of *Special Projects* in §170.3 related to certain special requests and reports submitted to NRC for review would be deleted.

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

percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licensees. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2002 proposed surcharge costs that would be allocated to each class of licensees are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI - Allocation of Surcharge

	LLW Surcharge		Non-LLW Surcharge		Total Surcharge
	Percent	\$,M	Percent	\$,M	\$,M
Operating Power Reactors	74	1.1	79.7	34.1	35.3
Spent Fuel Storage/ Reactor Decomm.	---	---	7.7	3.3	3.3
Nonpower Reactors	---	---	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.8	2.5	2.6
Materials Users	18	0.3	4.5	1.9	2.2
Transportation	---	---	1.3	0.5	0.5
Rare Earth Facilities	---	---	0.2	0.1	0.1
Uranium Recovery	---	---	<u>0.9</u>	<u>0.4</u>	<u>0.4</u>
TOTAL SURCHARGE	100	1.5	100.0	42.9	44.4

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address <http://www.gov/Reading-Rm/ADAMS.html>. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

Because the FY 2002 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 final rule would be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule would be billed for the annual fee at the FY 2002 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities

Class I (conventional mills)	3	770	2,310	34	
Class II (solution mining)	6	645	3,870	58	
11e.(2) disposal	1	475	475	7	✓
11e.(2) disposal incident to existing tailings sites	←1	75	75	1	—

Applying these factors to the \$0.7 million in budgeted costs to be recovered from Title II specific licensees results in the following proposed annual fees:

TABLE X - Annual Fees for Title II Specific Licenses

<u>Facility Type</u>	<u>Proposed FY 2002 Annual Fee</u>
Class I (conventional mills)	\$ 77,700
Class II (solution mining)	65,100
11e.(2) disposal	47,900
11e.(2) disposal incidental to existing tailings sites	7,600

In the FY 2001 final rule (66 FR 32478), the NRC revised §171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in §171.19(b), if the amounts collected in the first three quarters of FY 2002 exceed the amount of the revised annual fee, the overpayment will be refunded. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in §171.19(c).

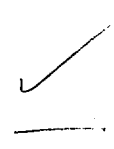
exemption section "... provides that the holder of a license to 'operate' a power reactor ... may apply to the Commission for partial relief from annual fee[s]."

In the FY 1999 final fee rule (64 FR 31448; June 10, 1999), the NRC established the Spent Fuel Storage/Reactor Decommissioning (SFSRD) class with an annual fee to be assessed to all reactor licensees having fuel onsite, regardless of their operating status. In the statement of considerations for the FY 1999 fee rule, the NRC stated that the Commission determined all reactors, including those which are shut down, should pay the SFSRD annual fee to recover the NRC's costs related to generic reactor decommissioning and spent fuel storage activities. It is clear from the statement of considerations that the Commission did not intend to relieve reactors that are not operating from the annual fee requirements unless they had permanently ceased operations and had no fuel onsite.

The Commission reemphasizes that all communications concerning annual fees, including exemption requests, should be addressed to the Chief Financial Officer, U.S. NRC, Washington D.C. 20555-0001 in accordance with §171.9.

4. Administrative Amendment

The
To NRC is proposing to modify Category 1.B. of §171.16(d) to specifically include licenses issued under part 72 for the reactor-related Greater than Class C Waste. This is an administrative change that would be made only to ensure consistency with the proposed description for fee category 1.B. of §170.31 as described in A. above. The NRC is not proposing an annual fee for this category of license.



In summary, the NRC is proposing to --

1. ^{set} ~~Establish~~ new rebaselined annual fees for FY 2002;
2. Modify part 171 to specifically authorize assessment of annual fees to part 52 combined licenses;
3. Clarify that the annual fee exemption provision in §171.11(c) applies only to 'operating' reactors;
4. Make an administrative change to fee category 1.B. of §171.16(d) to be consistent with the proposed change to category 1.B. of §170.31.

III. Plain Language

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

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by

(a) * * * * *

(1) A special project that is a request/report submitted to the NRC --

(i) 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;

(ii) 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

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

(A) This fee exemption applies only when ^P(1) it has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements); and ^P(2) the NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph ^{(a)(1)} (iii)(A)(1) of this ^{section} paragraph, even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) This fee waiver provision does not apply to reports/requests submitted for NRC review that will provide a special benefit to identifiable recipients, such as the industry, vendors, or others regulated by the NRC. Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents

is the requesting organization. In this case, the waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

* * * * *

4. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§170.21 Activities)	\$156 per hour
Nuclear Materials and Nuclear Waste Program (§170.31 Activities)	\$152 per hour

5. In §170.21, the introductory text, Category J, Category K, and footnotes 1, 2, and 3, to the table are revised to read as follows:

§170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility Categories and Type of Fees Fees^{1,2}

J. Special projects:

Approvals and preapplication/licensing activities	Full Cost
Inspections ³	Full Cost

K. Import and export licenses:

✓ Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110. ✓

Application \$700

- 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:⁴

Application \$1,400

- E. Licenses or certificates for construction and operation of a uranium enrichment facility:

Licensing and inspection Full Cost

2. Source material:

- A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

Licensing and inspection Full Cost

- (2) Licenses that authorize the receipt of byproduct material, as defined



in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):

Licensing and inspection Full Cost

- (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):

Licensing and inspection Full Cost

- B. Licenses which authorize the possession, use, and/or installation of source material for shielding:

Application \$170

- C. All other source material licenses:

Application \$6,000

- 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 \$7,100

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.

7. The authority citation for Part 171 continues 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).

8. Section 171.3 is revised to read as follows:

§171.3. Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. These regulations also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

9. In Section §171.5, the definition of Greater than Class C Waste is added to read as follows:

§171.5 Definitions.

* * * * *

Manufacturing entities that

have an average of 500

employees or less

35 to 500 employees \$2,300

Less than 35 employees \$500

Small Governmental Jurisdictions

(Including publicly supported

educational institutions)

(Population)

20,000 to 50,000 \$2,300

Less than 20,000 \$500

Educational Institutions that

are not State or Publicly

Supported, and have 500 Employees

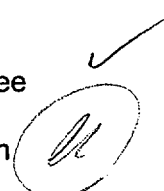
or Less

35 to 500 employees \$2,300

Less than 35 employees \$500

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

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

A handwritten signature, possibly 'M', is circled in black. A checkmark is drawn above the signature.

(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 2002 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 2002 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown for convenience in paragraph (e) of this section.

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

III. Maximum Fee

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

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 96 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 2001 fee rule remain valid for FY 2002.

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration regulations (13 CFR Part 121). ✓

- ✓ 1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.
- ✓ 2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).
- ✓ 3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).
- ✓ 4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

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

<u>Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations</u>	<u>Maximum Annual Fee Per Licensed Category</u>
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