

UNITED STATES NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 7, 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, Chief

Rules and Directives Branch Division of Administrative Services

Office of Administration

SUBJECT:

REVIEW OF THE PROPOSED FY 2002 FEE RULE

The Office of Administration has reviewed 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 our comments.

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

Attachment: As stated

requires that the NRC collect the FY 2002 fees by September 30, 2002, requests for extensions of the comment period will not be granted.

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. Comments received may also be viewed and downloaded electronically via this interactive rulemaking Website.

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 Readin

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

FY 2002 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 notice of the petition and the invitation to submit comments to each of the NRC's more than 5000 licensees. The comment period expired on January 16, 2002 and the NRC is now evaluating these comments.

The Commission anticipates issuing its decision on the rulemaking petition prior to projected promulgation in June of 2002 of the final fee rule for FY 2002. 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 netice 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 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 of 2002. 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 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

As shown in Table II, dividing the \$283.0 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of \$276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program would be \$156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$276,345) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Similarly, dividing the \$76.8 million (rounded) budgeted amount included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of \$269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program would be \$152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$269,451) by the number of productive hours in one year (1,776 hours).

2. Fees for Storage of Greater than Class C Waste Under Part 72

On October 11, 2001, the NRC published a final rule (66 FR 51823) revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in §72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of §170.31 to specifically include storage of reactor-related GTCC waste licensed under part 72. Category 1.B. of §170.31 currently refers only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion 3 of Footnote 4 to §170.21 and criterion (c) of §170.21 to 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 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.

To further clarify the intent of the fee waiver provision, 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 fee waiver eriterion apply only when it has been demonstrated that the topical report or request has been submitted to the NRC for the specific purpose of supporting NRC's generic regulatory improvements. The proposed modification would also clarify that the waiver provisions do not apply to topical reports or documents submitted for NRC's review that will provide a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples would be provided in criterion 3 of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 of the types of submissions that meet the fee waiver criteria and those that do not.

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

- Revise the material 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. Revise criterion 3 of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to clarify that the fee waiver provisions apply only when it has been demonstrated that the topical reports or requests have been submitted to the NRC for the specific purpose of supporting NRC's generic regulatory improvements, and to clarify that the waiver provisions do not apply to topical reports or documents submitted for NRC's review that will provide a special benefit to identifiable recipients, such as the industry or specific licensees.
- 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

The NRC proposes to revise the annual fees for FY 2002, to amend part 171 to specifically cover combined licenses issued under part 52, to clarify the annual fee exemption provision for reactors, and to modify the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. The proposed amendments are as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995) and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees for all classes of licensees, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which would have annual fee decreases.

The annual fees in §§171.15 and 171.16 would be revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is \$348.9 million, compared to \$331.6 million for FY 2001.

The proposed FY 2002 annual fees would increase for most categories of licensees and decrease for others from the previous year. The increases in annual fees range from approximately 5.1 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from

approximately 3.6 percent for non-power reactors, to approximately 18 percent for the Title II uranium recovery specific licenses.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licensees, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated Part 170 collections for the various classes of licensees, a \$1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a \$3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the proposed decreases for the Title II uranium recovery specific licenses is based on a proposed change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I an Title II licenses. This proposed change is described in detail in B. below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448) June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has reduced the total number of NMSS PMs from approximately 97 in FY 2000 to approximately four at this time. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed

will be considered a "Point of Contact." As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under Part 171.

Although the change in policy for assigning PMs causes a decrease in estimated part 170 collections for some classes, which means that more of the budgeted costs for that class must be recovered through annual fees, it does not result in an increase in total fees paid by these classes. Licensees in the rare earth facility class, for example, would have an annual fee increase of approximately 129 percent, although the total budgeted costs for the class actually decreased from FY 2001. The increase is annual fees is primarily the result the change in PM policy which caused a shift in cost recovery from part 170 to part 171. The effect of this change on the part 170 fees, part 171 fees, and the total fees for the class compared to FY 2001 is illustrated in Table III below.

TABLE III - Fees for the Rare Earth Class for FY 2001 and FY 2002

	FY 2001	FY 2002	Difference
Estimated part 170 fees	\$.81 million	\$.50 million	-\$.31 million
Total annual fee amount	.09 million	.21 million	+.12 million
Total	\$.90 million	\$.71 million	\$19 million

Table IV below shows the proposed rebaselined annual fees for FY 2002 for representative categories of licensees.

TABLE IVI Rebaselined Annual Fees for FY 2002

	LLW Surci	harge	Non-LLW Surcharge		Total Surcharge
	Percent	\$,M	Percent	\$,M 🗸	\$.M
Operating Power	74	1.1	79.7	34.1	35.3
Reactors					
Spent Fuel Storage/			7.7	3.3	3.3
Reactor Decomm.					
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			0.9	0.4	<u>0.4</u>
TOTAL SURCHARGE	100	1.5	100.0	42.9	44.4
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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 numeric 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 Table VII below.

TABLE VII - Effort Factors for Fuel Facilities

	Number of	Effort F	Effort Factors		
Facility type	<u>Facilities</u>	<u>Safety</u>	<u>Safeguards</u>		
High Enriched Uranium	2	91 (36.0%)	76 (57.1%)		
Fuel					
Enrichment	2	70 (27.7%)	34 (25.6%)		
Low Enriched Uranium	3	66 (26.1%)	18 (13.5%)		
Fuel					
UF ₆ Conversion	1	12 (4.7%)	0 (0%)		
Limited Operations	1	8 (3.2%)	3 (2.3%)		
Facility					
Others	1	6 (2.4%)	2 (1.5%)		
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the uranium recovery class. The first type is the NRC's Title I program for DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The second type is the NRC's Title II program; specifically, commercial solution mining facilities, conventional mills, and 11e.(2) mill tailings disposal facilities. Although the Title I program is part of the uranium recovery class, DOE is not currently assessed a portion of the NRC budgeted costs attributed to generic/other activities for the uranium recovery program. As a consequence, licensees under the NRC's specific licensing program (UMTRCA Title II) bear the entire cost of these activities.

In recognizing that the uranium recovery class is comprised of two types of licensees either falling under the NRC's Title I or Title II program, the Commission determined that it was appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care.

Therefore, the proposed methodology would allocate the total annual fee amount, less the amounts specifically budgeted for Title I activities, equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. Thus, the costs to be recovered through annual fees assessed to the uranium recovery class would be allocated as follows:

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):

UMTRCA Title I budgeted costs	\$ 377,232
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	<u>189,509</u>
Total Annual Fee Amount for DOE	\$ 1,056,000
Annual Fee Amount for UMTRCA Title II specific licenses:	
50% of generic/other uranium recovery budgeted costs	\$ 489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for Title II specific licenses	\$ 678,768

The costs allocated to the various categories of Title II specific licensees are 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 Title II 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 specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX - Weighted Factors for Uranium Recovery Licenses

Level of Benefit Total Weight Number of Category Value Percent **Facilities** Weight Facility Type 770 2310 34 3 Class I (conventional mills) 645 3870 Class II (in-situ mills) 475 475 11e(2) disposal 75 75 11e(2) disposal incident to existing tailings sites)

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

Facility type	Proposed FY 2002 Annual Fee	
Class I (conventional mills)	\$ 77,700	
Class II (in-situ mills)	65,100	
11e(2) disposal	47,900	
11e(2) disposal incidental	7,600	
to existing tailings sites		

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).

C. Power Reactors

The approximately \$273.6 million in budgeted costs to be recovered through FY 2002 annual fees assessed to operating power reactors would be divided equally among the 104 operating power reactors. This results in a proposed FY 2002 annual fee of \$2,630,000 per

specific license for receipt and processing of source material. The result is a proposed FY 2002 annual fee of \$68,400 for each rare earth facility.

As explained previously, the increase in annual fees for the rare earth class is not the result of increased budgeted costs for the class, but rather the result of the change in NMSS's revised PM policy, which resulted in a shift of cost recovery for certain activities from part 170 to part 171.

G. Materials Users

To equitably and fairly allocate the \$25.1 million in FY 2002 budgeted costs to be recovered in annual fees assessed to the approximately 5000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows.

Annual fee = Constant x [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier x (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately \$17.5 million in general costs and is 1.07 for FY 2002. The inspection multiplier is the multiple necessary to recover approximately \$5.3 million in inspection costs for FY 2002, and is 1.1 for FY 2002. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 2002, of the unique costs attributable to medical licensees for the medical development program, approximately \$126,900 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the \$1.9 million in surcharge costs allocated to the materials user class of licensees and, for certain categories of these licenses, a share of the approximately \$300,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in §171.16(d).

H. Transportation

Of the approximately \$4.8 million in FY 2002 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately \$1.4 million would be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance that it holds. Of the remaining \$3.4 million, approximately 25 percent would be allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent would be allocated only to the 39 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of \$7,300 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of \$72,800 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Part 52 Combined Licenses

The NRC proposes revising Part 171 to: authorize assessment of annual fees for holders of combined licenses issued under Part 52; clarify that the annual fees would be assessed for each license, and not for each unit; and establish when assessment of annual fees would begin.

Part 171 currently covers annual fees for Part 50 licenses, but does not specifically cover annual fees for combined licenses issued under Part 52. Additionally, neither Part 52 nor Part 171 address when NRC would begin to assess an annual fee to a Part 52 license holder. The NRC proposes to revise §171.3 'Scope' to specify that the annual fee regulations also apply to any person holding a combined license issued under Part 52.

The annual fees for a Part 52 combined license would be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Currently, §171.15(a) provides that reactor licensees shall pay an annual fee "... for each unit for each license held ...". The NRC issues a separate license for each reactor unit and, accordingly, the annual fees are assessed for each license. Because it was the NRC's intent, and sthe agency's present practice to charge annual fees per license, the NRC is proposing to revise §171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not proposing a specific annual fee category or amount for Part 52 combined licenses because there are no existing combined licenses issued under Part 52. However, the NRC is proposing these changes so potential applicants for a Part 52 combined license are aware that such a license will be subject to annual fees in the future.

3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying §171.11(c) to clarify that the annual fee exemption provision applies only to 'operating' reactors. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986) which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with 'operating' licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs.

Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in §171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for §171.11, the NRC stated that the added 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

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. Establish new rebaselined annual fees for FY 2002;

user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2002. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2002.

IX. Backfit Analysis

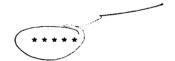
The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170 -- Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.



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

1. The authority citation for Part 170 continues to read as follows:

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

(42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definitions of *Special Projects* and adding the definition for *Greater than Class C Waste*:

§170.3 Definitions.

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Special Projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC—

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

Note: Remore fort
romposed signification

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

Whether to change this definition is still under consideration

Greater than Class C Waste or GTCC Waste means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in § 61.55.

3. 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 requalification 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

\$156 per hour

(§170.21 Activities)

Nuclear Materials and

\$152 per hour

Nuclear Waste Program (§170.31 Activities)

4. In §170.21, the introductory text, Category K, and footnotes 1, 2, 3, and 4 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

Fees1/2/

K. Import and export licenses:

45

of center

Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

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 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 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 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 specific purpose of supporting the NRC's generic regulatory improvements or efforts.

 (i) This fee waiver applies only when: (ii) 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 (2) the NRC plans to use the document for the one of the purposes given in (1), even if ultimately the NRC does not use the document as planned.

 [1] PRAGGRAPH (C) (1) (1) If this footpote
- An example of the type of document that meets the fee waiver criteria is a topical report value submitted to the NRC for the specific purpose of supporting NRC's development of a Regulatory Quide, and the NRC plans to use the topical report in the development of that Regulatory Guide.
- 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 submitted for purposes other than to specifically support NRC's generic regulatory improvements or efforts, even though NRC may realize some benefits from

its review and approval of the document, because the primary beneficiary of NRC's review and approval of such documents is the requesting organization.

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.

5. Section 170.31 is revised to read as follows:

§170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees1

Fee^{2, 3}

- 1. Special nuclear material:
 - A. Licenses for possession and use of 200 grams or more of

plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:

		Licensing and Inspection
S wyddiadau	В.	Licenses for receipt and storage of spent fuel and reactor-related GTCC waste a
		independent spent fuel storage installation (ISFSI):
		Licensing and inspection Full Cost
	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:⁴
		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 inequation

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.

16. Reciprocity:

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

(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 new fee category must be accompanied by the prescribed application fee for each category.

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:

- (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 specific purpose of supporting the NRC's generic regulatory improvements or efforts.
- (i) This fee waiver applies only when: (ii) 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 (2) the NRC plans to use the document for the one of the purposes given in (1), even if ultimately the NRC does not use the document as planned.
 - (1)An example of the type of document that meets the fee waiver criteria is a topical report submitted to the NRC for the specific purpose of supporting NRC's development of a Regulatory Guide, and the NRC plans to use the topical report in the development of that Regulatory Guide.
 - 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 submitted for purposes other than **to specifically support** NRC's generic regulatory improvements or efforts, even though NRC may realize some benefits from its review and approval of the document, because the primary beneficiary of NRC's review and approval of such documents is the requesting organization.
 - (%) 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.

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.

6. 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).

7. 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 Certificte of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

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

§171.5 Definitions.

XXXXX

Greater than Class C Waste means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in §61.55.

9. In §171.11, paragraph (c) is revised to read as follows:

(c) An exemption for operating reactors under this provision may be granted by the Commission taking into consideration each of the following factors: (1) Age of the reactor; (2) Size of the reactor; (3) Number of customers in tate base; (4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and (5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

10. Section 171.15 is revised to read as follows:

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

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

10. In §171.16, paragraphs (c), (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.

Small Businesses Not Engaged

Maximum Annual Fee

in Manufacturing and Small

Per Licensed Category

Not-For-Profit Organizations

(Gross Annual Receipts)

\$350,000 to \$5 million \$2,300

Less than \$350,000 \$500

Manufacturing entities that

have an average of 500

2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent by FY 2005. In addition, \$36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately \$479.5 million, which includes the security.

OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would

program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,300 licensees for FY 2001) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

- 1
- 1. Large firms would gain an unfair competitive advantage over small entities.

 Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.
- 2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in

about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

- 3. Some companies would go out of business.
- 4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees for materials licenses were tirst established approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since 1991.

 Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

- 2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
 - 3. Base fees on the NRC size standards for small entities.

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

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six 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 annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of \$1,800 while those in the lower tier paid an annual fee of \$400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The

structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through Part 170 fees for services, are now included in the Part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from \$1,800 to \$2,300 in FY 2000. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of \$2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee 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.

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.

As stated in the 2001 Regulatory Flexibility Analysis, (66 FR 32452/June 14, 2001), the NRC will re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule (65 FR 36946; June 12, 2000). Therefore, the FY 2002 small entity annual fee will remain at \$2,300, and the lower tier small entity annual fee will remain at \$500. The NRC plans to re-examine the small entity fees in FY 2003.

IV <u>Summary</u>

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

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act.

The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this compliance guide has been prepared to assist NRC material licensees comply with the FY 2002 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2002 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed

Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's external web site at http://www.nrc.gov. The form can then be accessed by selecting "Planning & Financial Management" and then selecting "NRC License Fee thogram" and under "Forms" selecting NRC Form 526. 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. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the

and

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.



- 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:

Small Business Not Engaged

Maximum Annual Fee

in Manufacturing and Small

Per Licensed

Not-For Profit Organizations

Category

(Gross Annual Receipts)

\$350,000 to \$5 million

\$2,300

Less than \$350,000

\$500

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

To pay a reduced annual fee, a licensee must use NRC Form 526. The NRC is proposing to eliminate mailing NRC Form 526 with the annual fee invoice. Instead, licensees can access this form on the NRC's external web site at http://www.nrc.gov. The form can then be accessed by selecting "Planning & Financial Management" and then selecting "NRC License Fee Program" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 would 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 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 invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7544, or by e-mailing us at fees@nrc.gov.

Instructions for Completing NRC Small Entity Form 526

- 1. File a separate NRC Form 526 for each annual fee invoice received.
- 2. Complete all items on NRC Form 526 as follows:
 - a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.
 - b. The Standard Industrial Classification (SIC) Code must be entered if known.
 - c. The licensee's name and address must be entered as they appear on the invoice.

 Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a

(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).

Dated at Rockville, Maryland, this _____ day of _____, 2002. For the Nuclear Regulatory Commission. Jesse L. Funches, Chief Financial Officer.

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