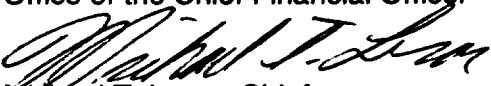




UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 20, 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: OFFICE CONCURRENCE ON THE FINAL FY 2002 FEE RULE

The Office of Administration concurs, subject to the comments provided, on the final 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.

When forwarding this document for publication, please include in the transmittal package:

- a 3.5-inch diskette that contains a copy of the document in WordPerfect (to be used by the Office of the Federal Register and the Government Printing Office to typeset the document.)
- a copy of the Congressional letters on a diskette; this diskette will be forwarded to the Office of Congressional Affairs.
- the ADAMS accession number; please give SECY owner's rights in the ADAMS security profile for this document.

A Regulatory History must be created in ADAMS for this final rule after it has been published in the *Federal Register*. In the profile of each document related to the Regulatory History, use the Regulation Identifier Number (RIN) as the Case/Reference Number (RIN 3150-AG95). This will make it easier to combine the documents into a package in ADAMS after publication of the rule.

If you have any questions concerning this matter, please have a member of your staff contact me at 415-7163 (MTL) or Cindy Bladey, ADM, at 415-6026 (CXB6).

Attachment: As stated

16 May 2002

**DRAFT**

G:\DAF\LFARB\2002 final fee rule.wpd

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

10 CFR Parts 170 and 171

RIN: 3150-AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

Please provide  
Comments to  
OCFO/Fees Group  
by COB, Monday,  
5/20/02.  
Thanks!

ADM

5/21/2002

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately \$479.5 million.

**EFFECTIVE DATE:** (Insert 60 days after publication in the Federal Register).

**DRAFT**

**ADDRESSES:** The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/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 [pdrr@nrc.gov](mailto:pdrr@nrc.gov). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

**FOR FURTHER INFORMATION CONTACT:** Glenda Jackson; Telephone 301-415-6057 or Robert Carlson; Telephone 301-415-8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

- I. Background

- II. Responses to Comments
- III. Final Action
- IV. Voluntary Consensus Standards
- V. Environmental Impact: **Categorical Exclusion**
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis
- X. Small Business Regulatory Enforcement Fairness Act

#### I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 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 in FY 2005. As a result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this

\$36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately \$479.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

## II. Response to Comments

The NRC published the FY 2002 proposed fee rule on March 27, 2002 (67 FR 14818), to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The comment <sup>NRC received before IPO</sup> period ended on April 26, 2002, whereby 11 comments were received. <sup>that</sup> The NRC received two <sup>and</sup> additional comments by May 13, 2002, for a total of 13 comments, which were considered in this <sup>final</sup> fee rulemaking. Many of the commenters raised similar issues. As such, these comments have been grouped according to similar issues, and are addressed in a collective response.

The comments and NRC's responses are as follows:

A. Legal Issues.

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

**P** Comment. One commenter urged the NRC to provide licensees and the public with a more detailed explanation of the specific activities and associated costs that form the basis for the Part 171 annual fees, including detailed information on the outstanding major contracts, their purpose, and their costs. The commenter indicated that more detailed information would allow stakeholders to provide more effective feedback on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility. The commenter acknowledged the ability to access the agency work papers through the NRC's Public Document Room or by using the Agencywide Documents Access and Management System (ADAMS), but finds this supporting material to be indecipherable.

Response. The NRC believes that commenters were provided ample information on which to base constructive comments on NRC's proposed revisions to Parts 170 and 171. Consistent with the requirements of OBRA-90, the proposed fees were developed to recover approximately 96 percent of the NRC's FY 2002 budget authority from the various classes of licensees. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities.

The NRC's budgets and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the amounts

appropriated from the NWF and the General Fund, as required by OBRA-90, as amended.

Therefore the commenter's suggestion that more detailed information would allow the public to provide more effective comments concerning the efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule.

The NRC acknowledges that the work papers supporting the proposed fee rule contain very detailed information. The work papers reflect the complexity of the fee calculation process that is necessary to ensure that the fees are fair and equitable to all licensees. The work papers show the total budgeted FTE and contract costs at the planned accomplishment level for each activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes.

In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG-1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003 (February 2002)," which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule. If there are outstanding concerns after reviewing the fee information in the proposed rule and the agency work papers, questions or comments should be referred to the fee information contact listed in this fee rule.

*L for further*

**B. Specific Part 170 Issues.**

Part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

## 2. Fee Exemptions for Special Projects

Comment. Five comments were received opposing the <sup>NRC's</sup> proposed modifications to the fee waiver provisions for special projects. One commenter stated that the proposed revisions would discourage cooperative efforts between <sup>the</sup> NRC and industry to address safety issues and opportunities for generic regulatory improvement. Some commenters assert that the changes are inconsistent with the NRC's goals to improve regulatory efficiency, effectiveness, to reduce unnecessary burden on stakeholders, and to promote increased realism in regulatory decision-making. They believe that the changes provide disincentives by imposing unwarranted obstacles discouraging industry initiative and mutual cooperation. Several commenters stated that the NRC's proposed action would not support "ground breaking" licensing actions and without some relief from fees, there is no incentive for a licensee to pilot an initiative that may contribute to generic regulatory activity and which may serve as a significant precedence for other licensees. Two of the commenters stated that relocating the fee waiver requirements adds a degree of formality to the process and such formality costs the industry and the NRC resources and time. The commenters urged the NRC to revise the provisions to encourage industry to work cooperatively with the NRC on generic regulatory improvements or efforts.

**(Ann: we need to add here the remaining items from my handout in Jesse's office, and then try to address those)**



Response. As stated in the proposed fee rule, the NRC believes that the clarifications to the fee waiver for special projects are necessary because the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions.

The NRC's original interpretation of the fee waiver provisions has not changed, and has been consistently applied in granting or denying fee waiver requests. The NRC thoroughly evaluates all exemption requests and bases its decision <sup>on</sup> whether a special project meets the fee waiver criteria. Not every submittal results in a safety improvement, burden reduction, or improved process. The NRC staff must agree that the submittal will assist the NRC in developing or improving its regulatory framework. If an applicant or licensee believes that their proposal will improve an NRC regulatory process, the NRC encourages industry to discuss their proposal with the NRC staff <sup>before</sup> ~~prior to~~ requesting a fee waiver.

With regard to fee waivers for "ground breaking" licensing actions, the fee exemption provision for special projects does not apply to licensing actions. As defined in §170.3, special projects are those requests submitted to the NRC for review for which fees are not otherwise specified in part 170. Part 170 specifies fees for licensing actions, therefore, first-of-a-kind licensing actions are not special projects for purposes of part 170. The waiver criteria that was previously in footnote 4 of §170.21 and footnote 5 of §170.31, which in this final rule the NRC is moving to §170.11, has always specifically referred to special projects (see §170.11(a)(1)). The NRC will continue to address exemption requests for first-of-a-kind licensing actions on a case-by-case basis under §170.11(b).

The NRC believes that the modifications to the criteria language has the potential to save both NRC and industry resources because the industry will have more definitive guidelines on the types of submission that will be granted a fee waiver and therefore will not request fee waivers for those special projects that do not meet the waiver criteria. Further, moving the fee waiver criteria to the exemption section of Part 170 does not change the process. The NRC believes that it is more appropriate to have the fee exemption provisions for special projects with the other Part 170 fee exemption provisions.

The NRC, in this final rule, is revising the fee waiver criteria to clarify the fee exemption provisions. In addition, the exemption section of §170.11 is being revised to include the language that was previously located in footnote 4 to §170.21 and footnote 5 to §170.31.

### 3. Invoice Information.

Comment. One commenter asserted that NRC's invoices lack adequate explanations of the work done by NRC staff and NRC Contractors. The commenter urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, the commenter contended that the change would serve the NRC, its licensees, and the public well.

Response. As the NRC has stated in the past, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under Part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in the Human Resources Management System (HRMS), which is the

C. Specific Part 171 Issues.

1. Annual Fees for Materials Users, Including Small Entities

Comment. Two nuclear density gauge users and one manufacturer commented <sup>that</sup> on their fees <sup>are</sup> being too high, and creating <sup>e</sup> a significant financial burden on small business owners. One commenter stated that the combined license application fee and annual fee for this category equals 80 percent of the cost of the gauge device. The commenter further asserted that Agreement States' fees average about one-fourth of NRC's proposed fees, causing an unfair disparity in the industry. Another commenter indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that it was essential to maintain this segment of business in order to retain other contracts not related to their NRC license. Therefore, the commenter contended that only income generated from NRC licensed activities should be considered when establishing fees. With respect to the NRC's upper fee level for small entities, the third commenter stated that the broad revenue range encompassing \$350,000 to \$5,000,000 in gross annual receipts tends to advantage larger firms while burdening smaller businesses. Thus, the NRC should consider adding more tiers for small businesses to reduce the license fee burden on smaller entities.

Response. The NRC has responded to similar comments in previous fee rulemakings, both from materials users and other licensees, regarding the impact of fees on industry. In summary, the NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result

qualifies as a small entity under the NRC's revenue-based size standards. The NRC does not have the data available, nor the financial expertise to evaluate each licensee's business records and determine the source of its revenues. Instead, the NRC assesses its fees based on the license authorization.

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid for by other NRC licensees in order to comply with the OBRA-90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA-90 and the RFA requirement for the agency to examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC is not providing any modification to its small entity fee structure, nor any further reduction in annual fees beyond that already provided for small entities.

## **2. Annual Fees for Uranium Recovery Licensees**

**Comment.** Two uranium recovery industry groups and one licensee commented on the FY 2002 proposed fee rule. All unanimously supported the NRC's revised methodology for allocating uranium recovery budgeted costs and the revised Project Manager (PM) assignment policy, which results in reduced annual fees for the commercial uranium recovery licensees. However, despite the proposed reductions, these commenters felt that the NRC's annual fees

are excessive and represent a tremendous burden to the uranium recovery industry, which is already experiencing a severe economic downturn because of the depressed uranium market. The commenters all believe there is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort. Thus, the commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs. Additionally, the commenters state that the NRC has failed to adequately deal with the issue of decreasing numbers of uranium recovery licensees, or charging annual fees to licensees in standby. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. As such, the commenters argue that there is a lack of reasonable relationship between annual fees and regulatory services rendered by the NRC. One commenter indicated that the NRC's policy of charging annual fees to licensees in standby, who require minimal oversight, is not commensurate with the benefit of holding a license, and unfairly penalizes those licensees who are waiting for market conditions to improve before they become operational again.

Response. The NRC has responded to these <sup>raised</sup> ~~presented~~ <sup>se</sup> issues by the commenters in several previous fee rulemakings. Moreover, the NRC acknowledges that the uranium recovery industry is experiencing an economic downturn in the market for uranium. However, since FY 1991, when the 100 percent fee recovery requirement was enacted under OBRA-90, the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the provisions of the RFA. To grant fee relief to the uranium recovery industry on the basis of its economic

In this rulemaking, the Commission adopted the revised methodology for allocating uranium recovery budgeted costs. Moreover, the FY 2002 annual fees reflect the Office of Nuclear Material Safety and Safeguard's revised policy for assigning PMs.

### 3. Annual Fees for Power Reactor Licensees

Comment. Three commenters addressed the proposed annual fees for the power reactor class. Two commenters agreed with the NRC's policy, clarified in the proposed fee rule, of charging annual fees on a per license basis, and not on a reactor-unit basis. However, according to one of the commenters on this issue, this approach would not be equitable if the NRC assesses two separate annual fees to a dual unit standard reactor facility, such as those certified under Part 52, Appendix C, if the sum of these fees exceeded the annual fee charged to multi-unit reactor modular facilities, providing these modular facilities had a single license. The other commenter on this subject asserts the NRC should make it clear in the FY 2002 final rule that the agency's underlying intent is to assess multi-unit reactor modular facilities a single annual fee, regardless of whether the licensee holds a single or multiple combined operating license(s). One commenter stated the industry objects to the NRC's approach of allocating generic costs through Part 171, indicating that the power reactor class of licensees bear a large share of the annual fee burden.

Response. In the FY 2002 proposed fee rule, the NRC stated its intent to revise §171.15(a) to clarify that annual fees are assessed on a per license basis, and not for each reactor unit. The NRC reiterates that this clarification is not a change to its existing policy of charging annual fees for each license. Furthermore, the NRC is not proposing a specific annual fee category or

C. Other Issues.

1. NRC Budget

Comment. One commenter stated that the NRC's overall budget should be reduced by more efficient use of resources resulting from the agency's revised regulatory approach. Specifically, under the NRC's reactor oversight program, there has been a reduction in the number of regional initiative inspections, yet these reductions are not accounted for in the proposed fees. Moreover, according to the commenter, successful implementation of the reactor oversight program provides the NRC an opportunity to reallocate existing resources to meet the challenges of risk-informing regulations and licensing new reactor designs. Another comment indicated that the NRC should consider consolidating the regional offices in the near term, and eliminating them altogether in the longer term, in order to save agency resources.

Response. As noted in several previous fee rules, the NRC's budget and the manner in which the agency implements its programs are not within the scope of this rulemaking. Therefore, this final rule does not address comments concerning the NRC's budget or the use of its resources. The NRC's budget is submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally approved budget resulting from this process reflects the resources necessary for NRC to execute its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

\$348.9 million will be recovered through the part 171 annual fees, compared to \$331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in Millions]

Total Budget Authority	\$559.1	
Less NWF	- 23.7	
Less General Fund	<u>- 36.0</u>	
Balance	\$499.5	→
Fee Recovery Rate for FY 2002	<u>x 96.0%</u>	→
Total Amount to be Recovered For FY 2002	\$479.5	
Less Carryover from FY 2001	<u>- 1.7</u>	
Amount to be Recovered Through Fees and Other Receipts	\$477.8	
Less Estimated Part 170 Fees and Other Receipts	<u>- 120.7</u>	
Part 171 Fee Collections Required	\$357.1	
Part 171 Billing Adjustments		
Unpaid FY 2002 Invoices (estimated)	2.9	
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	<u>- 11.1</u>	
Subtotal		← <u>- 8.2</u>

*align*



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

	[Dollars in Millions]		
	<u>FY 2001</u>	<u>FY 2002</u>	
Estimated part 170 fees	\$.81 million	\$.50 million	
Total annual fee amount	<u>.09 million</u>	<u>.21 million</u>	<u>+.12 million</u>
Total	\$.90 million.	\$.71 million	\$-.19 million

← New header added to this final rule: if "millions" is in header, delete from columns?

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

TABLE IV - REBASELINED ANNUAL FEES FOR FY 2002

<u>Class/category of licenses</u>	<u>Proposed FY 2002</u> <u>Annual fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$2,869,000
Spent Fuel Storage/Reactor Decommissioning	239,000
Nonpower Reactors	71,300
High Enriched Uranium Fuel Facility	4,073,000

The FY 2002 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately \$18.8 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to part 171 fees applicable to fuel facilities, the budgeted costs included in the annual fee will be spread among the remaining licensees/certificate holders, and <sup>will</sup> result in a higher fee for those remaining in that fee category.

Prior to the beginning of FY 2002, one low enriched uranium fuel facility permanently ceased licensed operations and filed for an amendment to place its license in a decommissioning status. The annual fees for the fuel facility class reflect this change in the number of licensees subject to annual fees.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting 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 definition of *Special projects* and adding in alphabetical order, the definition for Greater than Class C Waste or GTCC Waste to read as follows:

**§170.3 Definitions.**

\*\*\*\*\*

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 10 CFR Part 61.55.

<sup>5</sup> There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

<sup>6</sup> Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

<sup>7</sup> Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

<sup>8</sup> No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

<sup>9</sup> Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

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

<sup>11</sup> See §171.15(c).

<sup>12</sup> See §171.15(c).

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

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

(1) LLW disposal generic activities;

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

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.).

KU  
P/01

\*\*\*\*\*

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

from P 106

For the Nuclear Regulatory Commission.

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

Note: Some document text must be included on signature page

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

(1) LLW disposal generic activities;

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

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

\*\*\*\*\*

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,  
Chief Financial Officer.

Distribution:

OCFO R/F                      OCFO/DAF/LFARB RF  
OCFO S/F                      OCFO/DAF R/F (DAF-1-233)  
EDO R/F                        OC 2001-377 (S Hudson)  
OIG                              ANorris  
OCFO/DAF SF (LF-1.27)

DOCUMENT NAME: g:daf\lfarb\2002 final fee rule.wpd

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	OCFO:DAF/LFARB	OCFO:DAF	ADM	OGC
NAME	RCarlson/GJackson DDandois	CTurner	MLesar	TBRothschild
DATE	/ /02	/ /02	/ /02	/ /02

OFFICE	OIP	EDO	DCFO	CFO
NAME	JLee	WTravers	PRabideau	JLFunches
DATE	/ /02	/ /02	/ /02	/ /02

OFFICIAL RECORD COPY