

Comments incorporated  
2/14/03  
RBC

February 13, 2003

NOTE TO: Bob Carlson, OCFO

FROM: Michael T. Lesar, ADM / *A. Shepard for*

SUBJECT: REVIEW OF THE PRELIMINARY DRAFT FY2003 PROPOSED FEE RULE

The Rules and Directives Branch has reviewed your proposed draft of the FY2003 fee rule. We have attached a marked copy of the rulemaking presenting our comments. We'd like to remind you that you will need to include a Regulatory Flexibility Analysis (APPENDIX A) with your proposed rule, as well as its ATTACHMENT1, Small Entity Compliance Guide for FY2003.

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

Attachments: As stated

**DRAFT** 2/4/03

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 170 and 171**

**RIN: 3150-AH14**

**Revision of Fee Schedules; Fee Recovery for FY 2003**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 94 percent of its budget authority in fiscal year (FY) 2003, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2003 is approximately \$526.5 million.

**DATES:** The comment period expires (Insert date 30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90

requires that the NRC collect the FY 2003 fees by September 30, 2003, 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 be faxed to (301) 415-1101.

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

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may also be examined during the 30-day

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 94 percent of its FY 2003 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts.

*Because there was no*  
*In the absence of an enacted appropriation bill* *at* *for the NRC*  
*the NRC staff* *by* the time this proposed fee rule was signed, the FY 2003 proposed fees are based on the recommended appropriation level approved by both the House and Senate appropriation committees (\$585.0 million). If the final budget authorization varies from this amount, the fees set forth in the final fee rule could differ from these proposed fees.

Consistent with the President's budget request, the NRC staff also requested that the agency's homeland security expenses be excluded from the fee base. However, because both of the Congressional appropriations committees directed that these expenses be included in the fee base, the proposed fees include homeland security costs. [OGC - Trip; need something here about current status of 2003 budget approval] The total amount to be recovered in fees and other offsetting receipts for FY 2003 is approximately \$526.5 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

Adjusted Part 171 Collections Required

\$400.2

The FY 2003 final fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2003 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2003 final rule. For these licensees, payment would be due on the effective date of the FY 2003 rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the final FY 2003 rule would be billed for the annual fee during the anniversary month of the license at the FY 2002 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2003 rule would be billed for the annual fee at the FY 2003 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

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 2003 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June 2002<sup>3</sup>. In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

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

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

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates and the results of the agency's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, November 15, 1990, 104 Stat. 2838). Additionally, the NRC is proposing to revise fee category 15.A. of §170.31 to cover all categories of radioactive waste import license applications and to revise category 15.B. to remove the radioactive waste import license applications.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in §170.20. These proposed rates would be based on the number of FY 2003 direct program full time equivalents (FTEs) and the FY 2003 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the part 170 fees. The proposed rate for the reactor program is \$156 per hour (\$276,657 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is \$158 per hour (\$280,895 per direct FTE).

TABLE II  
SHOWS \$276,668  
rate per FTE

This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were \$156 and \$152, respectively.

~~The proposed increases reflect the Government-wide pay increase in FY 2003. In~~  
~~addition,~~ <sup>91</sup> the proposed increase to the materials program rate reflects a shifting of certain direct resources away from activities that are covered by the surcharge to activities directly benefitting the materials classes of licensees. This shift of direct resources causes a commensurate increase in the overhead costs allocated to the materials program because the overhead costs are allocated in proportion to the direct FTE costs.

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

- a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).
- b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.
- c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for

the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

**TABLE II - FY 2003 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES**

	Reactor <u>Program</u>	Materials <u>Program</u>
Direct Program Salaries & Benefits	\$134.1M	\$34.4M
Overhead Salaries & Benefits,		
Program Travel and Other Support	62.3M	17.1M
Allocated Agency Management and Support	<u>118.5M</u>	<u>31.1M</u>
Subtotal	\$314.9M	\$82.6M
Less offsetting receipts	<u>-0.1M</u>	<u>-0.00M</u>
Total Budget Included in Hourly Rate	\$314.8M	\$82.6M
Program Direct FTEs	1138.0	294.0
Rate per Direct FTE	\$276,668	\$280,924
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$156	\$158

As shown in Table II, dividing the \$314.9 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1138.0) results in a rate for the reactor program of \$276,668 per FTE for FY 2003. 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 (\$276,668) 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 \$82.6 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (294.0) results in a rate of \$280,924 per FTE for FY 2003. The Direct FTE Hourly Rate for the materials program would be \$158 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$280,924) by the number of productive hours in one year (1,776 hours).

## 2. Fee Adjustments

The NRC is proposing to adjust the current Part 170 fees in §§170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete materials licensing actions should be increased in some categories and decreased in others, as described below, to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2001 (66 FR 32452; June 14, 2001). Thus, the revised average professional staff hours in this

proposed fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2001.

As a result of ←

~~In summary,~~ the proposed licensing fees that are based on the average professional staff hours reflect an increase in average time for new license applications for six of the 33 materials fee categories included in the biennial review, a decrease in average time for eight fee categories, and the same average time for the remaining 19 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§170.21 and 170.31, and decreased for two other fee categories.

The proposed licensing fees for fee categories K.1 through K.5 of §170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of §170.31 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 2003.

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the proposed fee per registration is \$620, compared to the current fee of \$450. The proposed fee is based on the estimated number of registrants, current resource estimates, and the FY 2003 FTE rate. This increase to the current fee of \$450 is primarily due to a decrease in the expected number of registrations. When the current \$450 registration fee was established in the FY 2001 final fee rule (66 FR 32461; June 14, 2001), the NRC estimated that there would be 4300 registrations. The number of registrations is now expected to be 3000. The next biennial review of the registration fee will

be included in the FY 2005 fee rule; however, the registration fee may change in the FY 2004 fee rule if the FTE rate changes for FY 2004.

The amounts of the materials licensing "flat" fees are rounded as follows: fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

The NRC is also proposing to expand fee Category 15.A. of §170.31 to include all categories of radioactive waste import license applications, and to modify Category 15.B. of §170.31 to exclude these types of import license applications. This change is being proposed because all applications for the import of radioactive waste must be reviewed by the Executive Branch and require the involvement of all states and compacts, as well as extensive coordination within the NRC. Therefore, the NRC efforts for the waste import license applications are more closely aligned with the efforts for the other types of export and import licenses currently covered by Category 15.A.

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

1. Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise <sup>7</sup>category 15.A. of ~~\$170.31~~ to include radioactive waste import licenses, and exclude these types of applications from <sup>7</sup>category 15.B. ✓

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 2003 as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2003. 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), determined 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 licenses. The fees were last rebaselined in FY 2002. 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 five classes of licenses, decreased annual fees for two classes, and one class would have both increased and decreased annual fees for various inclusive categories of licenses.

Because there was no ~~in the absence of an~~ enacted appropriation bill <sup>for the NRC</sup> by the time this proposed fee rule was signed, ~~the NRC staff~~ <sup>at</sup> the FY 2003 proposed fees are based on the recommended appropriation level approved by both the House and Senate appropriation committees (\$585.0 million). If the final budget authorization varies from this amount, the fees set forth in the final fee rule could differ from these proposed fees. Consistent with the President's budget request, the NRC staff also requested that the agency's homeland security expenses be excluded from the fee base. However, because both of the Congressional appropriations committees directed that these expenses be included in the fee base, the proposed fees include homeland security costs.

The annual fees in §§171.15 and 171.16 would be revised for FY 2003 to recover approximately 94 percent of the NRC's FY 2003 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2003 is \$400.2 million, compared to \$345.6 million for FY 2002.

The proposed FY 2003 annual fees would increase for most categories of licenses, decrease for ~~others~~ <sup>some</sup>, and for two categories remain the same from the previous year. The increases in annual fees range from approximately 1.5 percent for materials licenses authorizing possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials, to approximately 175 percent for rare earth facilities. The decreases in annual fees range from approximately 2.2 percent for material licenses of broad scope for possession and use of byproduct material for processing or manufacturing items containing byproduct material for commercial distribution, to approximately 53 percent for materials licenses authorizing possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies (other than field flooding). The fees

[Dollars in Millions]

Category of costs

FY 2003 Budgeted costs

1.	Activities not attributable to an existing NRC licensee or class of licensee:	
a.	International activities	\$10.3
b.	Agreement State oversight	8.8
c.	Low-level waste disposal generic activities	2.7
d.	Site decommissioning management plan activities not recovered under part 170	3.6
2.	Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a.	Fee exemption for nonprofit educational institutions	6.7
b.	Licensing and inspection activities associated with other Federal agencies	2.9
c.	Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3.	Activities supporting NRC operating licensees and others:	
a.	Regulatory support to Agreement States	13.4
b.	Generic decommissioning/reclamation (except those related to power reactors)	4.9
	Total surcharge costs	<hr/> 57.8

Less 6 percent of NRC's FY 2003 total budget (less NWF and General Fund amounts)	-33.6
Total Surcharge Costs to be Recovered	\$24.2

As shown in Table V, \$24.2 million would be the total surcharge cost allocated to the various classes of licenses for FY 2003. The NRC would continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2003 proposed surcharge costs that would be allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI - ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	\$,M	Percent	\$,M	\$,M
Operating Power Reactors	74	2.0	79.3	17.1	19.1
Spent Fuel Storage/ Reactor Decomm.	---	---	7.2	1.6	1.6
Nonpower Reactors	---	---	0.1	0.0	0.0

Fuel Facilities	8	0.2	6.7	1.4	1.7
Materials Users	18	0.5	3.7	0.8	1.3
Transportation	---	---	2.2	0.5	0.5
Rare Earth Facilities	---	---	<del>0.2</del>	0.0	0.0
Uranium Recovery	---	---	<u>0.7</u>	<u>0.1</u>	<u>0.1</u>
TOTAL SURCHARGE	100	2.7	100.0	21.5	24.2

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

Because the FY 2003 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2003 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2003 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2003 rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the FY 2003 final rule would be billed for the

annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2002 rate in FY 2003. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2003 final rule would be billed for the annual fee at the FY 2003 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities

The proposed annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under Part 170, primarily homeland security activities related to fuel facilities. ~~For example, these homeland security~~ <sup>Such</sup> activities include the issuance of orders directing the fuel facility licensees to take interim compensatory measures to increase security. ~~Moreover, the NRC is conducting~~ <sup>Also included is</sup> a series of risk-informed vulnerability assessments ~~(VAs)~~ <sup>the NRC is conducting on</sup> for fuel facility licensees. Vulnerabilities of structures, process and protective systems, security operations and physical protection systems, information systems, material control and accountability systems, and access control systems vulnerabilities will be assessed, as applicable. The results of individual assessments then will be integrated into one comprehensive risk-informed assessment for fuel cycle, from which the NRC can make decisions about protective strategies for each type of facility.

The FY 2003 budgeted costs of approximately \$27.1 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448;

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

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII below.

TABLE VII - EFFORT FACTORS FOR FUEL FACILITIES

<u>Facility Type</u>	<u>No. of Facilities</u>	<u>Effort Factors</u>	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
U <sup>235</sup> Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the \$27.1 million total annual fee amount for the fuel facility class results in the proposed annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VIII - PROPOSED ANNUAL FEES FOR FUEL FACILITIES

<u>Facility type</u>	<u>Proposed FY 2003 annual fee</u>
High Enriched Uranium Fuel	\$5,871,000
Uranium Enrichment	3,656,000
Low Enriched Uranium	1,969,000
UF <sub>6</sub> Conversion	844,000
Limited Operations Facility	773,000
Others	562,000

**B. Uranium Recovery Facilities**

The FY 2003 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately \$1.5 million. Approximately \$1.0 million of this amount would be assessed to DOE. The remaining \$0.5 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined in FY 2002 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. This change in methodology was adopted in the FY 2002 final fee rule (67 FR 42612; dated June 24, 2002).

As a result of the change adopted in the FY 2002 final fee rule, the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated 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. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

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

UMTRCA Title I budgeted costs	\$ 393,243
50% of generic/other uranium recovery budgeted costs	496,392
50% of uranium recovery surcharge	<u>70,785</u>
<b>Total Annual Fee Amount for DOE</b>	<b>\$ 960,471</b>

Annual Fee Amount for UMTRCA Title II Specific Licenses:

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

<u>Facility type</u>	<u>Number of facilities</u>	<u>Category weight</u>	<u>Level of Benefit</u> →	
			<u>Value</u>	<u>Percent</u>
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

*(Center Column header)*

Applying these factors to the \$0.5 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 2003 annual fee

Class I (conventional mills)	\$ 64,900
Class II (solution mining)	54,400
11e.(2) disposal	40,000
11e.(2) disposal incidental to existing tailings sites	6,300

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 2003 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2003 final fee rule is published. 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 \$309.0 million in budgeted costs to be recovered through FY 2003 annual fees assessed to the power reactor class, which includes homeland security costs, would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2003 annual fee of \$2,971,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2003 spent fuel storage/reactor

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in Florida Power and Light Company v. United States, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

#### VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 94 percent of its FY 2003 budget authority through the assessment of 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.

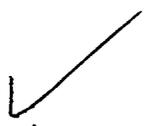
This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2003. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility

✓  
\* page 33 states current small entity fee is retained  
NOT CLEAR

? Not Attached

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 2003.



will also need guide for this rule

### 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.

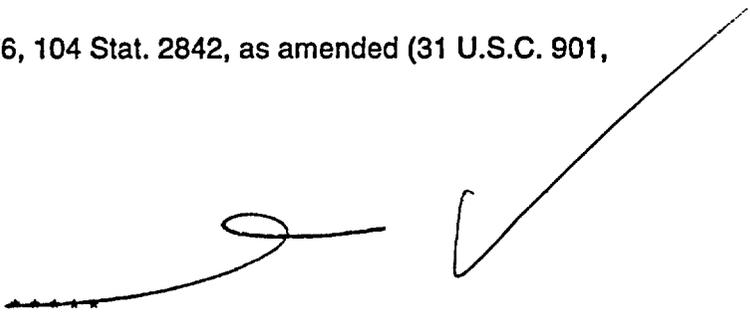
10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, 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).

A handwritten signature consisting of a series of loops and a long horizontal stroke, followed by a large checkmark.

2. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:

Licensing and inspection ..... Full Cost

15. Import and Export licenses:

Licenses issued under ~~Part 110~~ of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.

- A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.

Application - new license ..... \$10,300  
 Amendment ..... \$10,300

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export radioactive waste.

Application - new license ..... \$6,000  
 Amendment ..... \$6,000

<sup>4</sup> Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

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

7. The authority citation for part 171 continues to read as follows:

Authority: sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. Section 171.15 is revised to read as follows:

§171.15 Annual Fees; Reactor licenses and independent spent fuel storage licenses

(b)(1) The FY 2003<sup>\*</sup> annual fee for each operating power reactor which must be collected by September 30, 2003, is \$3,236,000.

(2) The FY 2003 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2003 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 base annual fee for operating power reactors are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

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

(2) The total FY 2003 surcharge allocated to the operating power reactor class of licenses is \$19.1 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2003 operating power reactor surcharge to be assessed to each operating power reactor is approximately \$183,300. This amount is calculated by dividing the total operating power reactor surcharge (\$19.1 million) by the number of operating power reactors (104).

(3) The FY 2003 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is \$1.6 million. The FY 2003 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately \$12,900. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2003 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter.....	N/A <sup>7</sup>
15. Import and Export licenses.....	N/A <sup>8</sup>
16. Reciprocity.....	N/A <sup>8</sup>
17. Master materials licenses of broad scope issued to Government agencies.....	\$228,000
18. Department of Energy:	
A. Certificates of Compliance.....	\$2,805,000 <sup>10</sup>
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities.....	\$960,000

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<sup>1</sup> Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2002, and permanently ceased licensed activities entirely by September 30, 2002. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use