

2/11/03 Glenda's
Changes

[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

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.

In the absence of an enacted appropriation bill 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 (~~\$584.9~~^{\$1585.0} 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

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. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 94 percent of its FY 2003 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWE and the General Fund. The NRC's proposed total budget authority for FY 2003 is \$585.0 million, of which approximately \$24.9 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must collect approximately \$526.5 million in FY 2003 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The amount to be recovered for FY 2003 includes \$29.3 million for homeland security. Consistent with the President's budget request, the NRC 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 fee schedules include those sums allocated for homeland security. The total amount to be recovered through fees and other offsetting receipts for FY 2003 is \$48.7 million more than the amount estimated for recovery in FY 2002.

The NRC estimates that approximately \$124.4 million will be recovered in FY 2003 from part 170 fees and other offsetting receipts. For FY 2003, the NRC also estimates a net

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 ^{hourly} 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 ^{hourly} rate for the materials program (nuclear materials and nuclear waste programs) is \$158 per hour (\$280,895 per direct ^{hour} ~~per hour~~). ✓

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.

~~put back in due to Government-wide pay raise~~
The proposed increase to the materials program rate is primarily due to the shifting of

certain resources away from activities that are covered by the surcharge, and more appropriately allocating these resources to other activities directly benefitting the materials classes of

licensees. This shift of resources causes an increase in the overhead costs allocated to the materials program because the overhead costs for each strategic arena are proportional to the direct FTE costs for the materials and reactor programs, and surcharge. *in each* *a commensurate proportion* *allocated to the materials and reactor rates and surcharges in proportion*

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	Materials
	<u>Program</u>	<u>Program</u>
Direct Program Salaries & Benefits	134.1 \$133.5M	34.4 \$35.0M
Overhead Salaries & Benefits,		
Program Travel and Other Support	2 62.8M	17.1 17.4M
Allocated Agency Management and Support	0.5 118.0M	31.1 31.6M
Subtotal	314.9 \$313.5M	82.6 \$84.0M
Less offsetting receipts	-0.1M ✓ 314.8	-0.00M ✓
Total Budget Included in Hourly Rate	\$313.4M	\$84.0M 82.6
Program Direct FTEs	1138.0 1133.1	299.0 28 294.0
Rate per Direct FTE	276,668 \$276,657	\$280,895 \$ 280,924
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$156 ✓	\$158 ✓

As shown in Table II, dividing the $\frac{314.9}{1133.1}$ million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1133.1) results in a rate for the reactor program of $\frac{276,668}{1,776}$ 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 ($\$276,657$ 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 $\$84.0$ ^{82.6} million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (299.0 ^{294.0}) results in a rate of $\$280,895$ 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 ($\$280,895$ 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.

that are based on the average professional staff hours ✓

In summary, the proposed licensing fees 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 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 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.

Insert

~~The proposed licensing "flat" fees are applicable to 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.~~ 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

The biennial review also included the fees 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 proposed registration fee will be imposed beginning with the first re-registration of devices currently in use. The NRC anticipates that the first re-registrations will be filed in the Summer of 2003. The registration fee will be required for each annual re-registration of the devices and for all new registrations of devices. 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.

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), ^{determines} 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 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.

In the absence of an enacted appropriation bill 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}\$584.9 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 ~~and the General Fund~~. 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, and for two¹ categories remain the same from the previous year. The increases in annual fees range from approximately 1.5¹ percent for materials licenses authorizing possession and use of less than 10,000 curies of byproduct material in sealed sources^{for} of irradiation of materials, to approximately 175 percent for rare earth facilities. The decreases in annual fees range from approximately 2¹/₂ 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 remain the same for materials licenses authorizing possession and use of byproduct material in sealed sources for irradiation of materials^{where the} (source is not removed from its shield), and licenses authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purposes of packaging or repackaging the material. ✓

Factors affecting the changes to the annual fee amounts ^{include} ~~consist of~~ adjustments in budgeted costs for the different classes of licenses (including the homeland security costs), the reduction in the fee recovery rate from 96 percent for FY 2002 to 94 percent for FY 2003, the estimated part 170 collections for the various classes of licenses, the increased hourly rates^{for the mfr and waste progra}, and decreases in the numbers of licensees for certain categories of licenses. In addition, there is no carryover from FY 2002 to reduce the FY 2003 fees. The FY 2002 fees were reduced by a \$1.7 million carryover from FY 2001. ✓

Table IV below shows the proposed rebaselined annual fees for FY 2003 for representative categories of licenses.

TABLE IV - REBASELINED ANNUAL FEES FOR FY 2003

<u>Class/Category of Licenses</u>	<u>Proposed FY 2003 Annual Fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	3,222,000 ^{3,236,000}
Spent Fuel Storage/Reactor Decommissioning	265,000 ✓
Nonpower Reactors	55,800 ✓
High Enriched Uranium Fuel Facility	6,188,000 ^{5,871,000}
Low Enriched Uranium Fuel Facility	2,074,000 ^{1,969,000}
UF ₆ Conversion Facility	889,000 ^{844,000}
Uranium Mills	64,900 ✓
Transportation:	
Users/Fabricators	154,200 ✓
Users Only	14,400 ✓
Typical Materials Users:	
Radiographers	12,200 ✓
Well Loggers	4,700 ✓
Gauge Users	1,900 ^{2,500}
Broad Scope Medical	21,900 ^{24,700}

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA-90, as amended.

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	\$,M	Percent	\$,M	\$,M
Operating Power	74 ✓	2.0 ✓	79.0 ^{79.3}	17.0 ^{17.1}	19.0 ^{19.1}
Reactors					
Spent Fuel Storage/ Reactor Decomm.	--- ✓	--- ✓	7.2 ✓	1.6 ✓	1.6 ✓
Nonpower Reactors	--- ✓	--- ✓	0.1 ✓	0.0 ✓	0.0 ✓
Fuel Facilities	8 ✓	0.2 ✓	70.6 ^{70.7}	1.5 ^{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	--- ✓	--- ✓	0.2 ✓	0.0 ✓	0.0 ✓
Uranium Recovery	--- ✓	--- ✓	0.7 ✓	0.1 ✓	0.1 ✓
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, ^{including} primarily ~~comprising~~ generic homeland security activities. ^{related to fuel facilities} For example, these homeland security activities include the fuel cycle ^{facility} licensees ~~that have been issued (or will be issued) Orders which direct them to take interim~~ ^{issuance of orders "direct"} compensatory measures to increase security. Moreover, the NRC is conducting a series of risk-informed vulnerability assessments (VAs) for ^{facility} fuel cycle and materials 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 and materials licensees, from which the NRC can make decisions about protective strategies for each type of facility.

The FY 2003 budgeted costs of approximately ~~\$28.6~~ ^{\$ 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; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), 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 licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to 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, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (e.g., decommissioning or license

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%) ✓
UF ₆ 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 ~~\$28.6~~^{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	\$6,186,000	\$5,871,000
Uranium Enrichment	3,852,000	3,656,000
Low Enriched Uranium	2,074,000	1,969,000
UF ₆ Conversion	889,000	844,000
Limited Operations Facility	815,000	773,000
Others	599,000	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	496,269	496,39
50% of uranium recovery surcharge	70,779	70,785
Total Annual Fee Amount for DOE	\$ 960,302	960,47,

Annual Fee Amount for UMTRCA Title II Specific Licenses:

50% of generic/other uranium recovery budgeted costs	\$ 496,269	496,3
50% of uranium recovery surcharge	70,779	70,78
Total Annual Fee Amount for Title II Specific Licenses	\$ 567,048	567,17

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 licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (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);

(2) The matrix relates the category and the level of benefit by program element and subelement;

11e.(2) disposal incident to existing tailings sites 1 ✓ 75 ✓ 75 ✓ 1 ✓

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

<u>Facility type</u>	<u>Proposed FY 2003 annual fee</u>
Class I (conventional mills)	\$ 64,900 ✓
Class II (solution mining)	54,300 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 ~~\$307.5~~^{\$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 ~~\$2,957,000~~^{\$2,971,000} per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2003 spent fuel storage/reactor decommissioning annual fee of ~~\$265,000~~^{\$265,000}. This would result in a total FY 2003 annual fee of ~~\$3,222,000~~^{\$3,236,000} for each power reactor licensed to operate.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2003, budgeted costs of approximately \$32.1 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2003 annual fee of \$265,000 per licensee.

E. Non-power Reactors

Approximately \$223,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2003. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2003 annual fee of \$55,800 for each licensee.

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 \$17.8 million in general costs and is 1.17 for FY 2003. The inspection multiplier is the multiple necessary to recover approximately \$4.5 million in inspection costs for FY 2003, and is 0.9 for FY 2003. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2003, of the unique costs attributable to medical licensees for the medical development program, approximately \$65,300 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the \$800,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately \$500,000 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 \$10.3 million in FY 2003 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses (including homeland security costs), approximately \$2.8 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 \$7.5 million, approximately $\frac{19}{25}$ percent would be allocated to the $\frac{89}{77}$ quality assurance plans authorizing use

only and the ⁴⁰~~39~~ quality assurance plans authorizing use and design/fabrication. The remaining ⁷⁵~~81~~ percent would be allocated only to the ⁴⁰~~39~~ quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of \$14,400 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of ^{154,000}~~\$154,200~~ for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

The NRC.
As stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), ^{that it would} ~~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. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2003. The revision to the small entity fees in FY 2000 ^(65 FR 36946; June 12, 2000) was based on the 25 percent increase in average total fees assessed to other materials licensees ^{in selected categories} since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time. The NRC compared the FY 2003 annual fees for ^{the} selected license categories to the FY 2000 (base year) annual fees for the same license categories, and the result was an average decrease of 21 percent for these categories. The NRC does not consider the approximately 21 percent decrease in the average FY 2003 fees for other materials licensees to be significant enough to ^a warrant ^{would} change to the small entity fees this year. ^{There have been no changes to the fee structure} Therefore, the FY 2003 small entity annual fee ^{would} ~~will~~ remain at \$2,300, and the lower tier small entity annual fee ^{would} ~~will~~ remain at \$500. ^{for the materials user class. licensees see 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 these licensees some of the NRC'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.

In summary, the NRC is proposing to --

1. Establish rebaselined annual fees for FY 2003;
2. *Retain the current reduced fees for small entities.*

III. Plain Language

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

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately ⁹⁶ percent of its budget authority in ~~FY 2002~~ as is required by the

Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).



VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in National Cable Television Association, Inc. v. United States, 415 U.S. 36 (1974) and Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). In these decisions, the

Application \$3,300 ✓

- O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:

Application \$3,300 ✓

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Registration \$1,200 ✓

- Q. Registration of a device(s) generally licensed under part 31 of this chapter:

Application ~~\$600~~ \$620

4. Waste disposal and processing:

- A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:

Licensing and inspection Full Cost

⁴ 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:

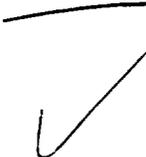
(b)(1) The FY 2003 annual fee for each operating power reactor which must be collected by September 30, 2003, is ~~\$3,222,000~~. *\$ 3,236,000,*

(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.

$\$119.1$
(2) The total FY 2003 surcharge allocated to the operating power reactor class of licenses is \$19.0 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 ~~\$182,700~~ $\$183,300$. This amount is calculated by dividing the total operating power reactor surcharge (~~\$19.0 million~~ $\$19.1$) 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 ~~\$12,200~~ $\$12,900$. 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:

(a) Strategic Special Nuclear

Material:

BWX Technologies
~~Babcock & Wilcox~~ \$5,871,000
 SNM-42.....~~\$6,186,000~~

Nuclear Fuel Services

SNM-124.....~~\$6,186,000~~ \$5,871,000

(b) Low Enriched Uranium in
 Dispersible Form Used for
 Fabrication of Power Reactor
 Fuel:

Global Nuclear Fuel
~~General Electric Company~~ \$1,969,000
 SNM-1097\$2,074,000

~~Siemens Nuclear Power~~ *Framatome ANP Richland* \$1,969,000
 SNM-1227.....\$2,074,000

Westinghouse Electric Company

SNM-1107.....~~\$2,074,000~~ \$1,969,000

(2) All other special nuclear materials
 licenses not included in Category 1.A.(1)
 which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

\$1,773,000
 Framatome ANP SNM-1168.....~~\$815,000~~

(b) All Others:

✓ ✓
General Electric SNM-960.....~~\$593,000~~ \$562,000 ✓

B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)..... N/A¹¹

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.....\$1,900 ✓

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 1.A.(2).....\$4,500 ✓

E. Licenses or certificates for the operation of a uranium enrichment facility.....~~\$3,852,000~~ \$3,656,000 ✓

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill

\$ 844,000

concentrates to uranium hexafluoride.....~~\$889,000~~



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

Class I facilities⁴.....\$64,900 ✓

Class II facilities⁴.....~~\$54,300~~

\$ 54,400 ✓

Other facilities⁴.....~~\$188,800~~

189,000

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or

10. Transportation of radioactive material:

A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.

Spent Fuel, High-Level Waste, and plutonium air packages.....N/A⁶

Other Casks.....N/A⁶

B. Quality assurance program approvals issued under part 71 of this chapter.

Users and Fabricators.....~~\$154,200~~

Users.....\$14,400

\$ 154,000
✓

11. Standardized spent fuel facilities.....N/A⁶

12. Special Projects.....N/A⁶

13. A. Spent fuel storage cask Certificate of Compliance.....N/A⁶

B. General licenses for storage of spent fuel under 10 CFR 72.210.....N/A¹²

- 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/A⁷

- 15. Import and Export licenses.....N/A⁸

- 16. Reciprocity.....N/A⁸

- 17. Master materials licenses of broad scope issued to Government agencies.....~~\$228,100~~ *\$228,000* ✓

- 18. Department of Energy:
 - A. Certificates of Compliance.....\$2,805,000¹⁰ ✓

 - B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities.....\$960,000 ✓

¹ 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

and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

⁴ A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

⁵ 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.

⁶ 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.

⁷ 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.

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

⁹ 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.

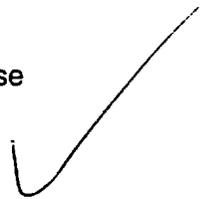
¹⁰ This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

¹¹ See §171.15(c).

¹² See §171.15(c).

¹³ 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.

applicable licenses in this category



(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.)

Dated at Rockville, Maryland, this _____ day of _____, 2003.

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Jesse's request last year

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.