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need updating)*

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) ~~and the General Fund~~. 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.

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

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

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

comment period at the NRC Public Document Room, Room O-1F22, One White Flint North,
11555 Rockville Pike, Rockville, MD 20852-2738.



FOR FURTHER INFORMATION CONTACT: Robert Carlson; Telephone 301-415-8165 or Ann
Norris; Telephone 301-415-7807, Office of the Chief Financial Officer, U.S. Nuclear Regulatory
Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Action
- III. Plain Language
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency

expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 94 percent of its FY 2003 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. 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 NWF and the General Fund. The NRC's 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

The amount to be recovered for FY 2003 includes \$29.3 million for homeland security, [Insert 1st 2 sentences of BO's last FF here]

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 total amount to be recovered through fees and other offsetting receipts for FY 2003 is \$47.0 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 adjustment of approximately \$1.9 million for FY 2003 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2003 for FY 2002 invoices. The remaining \$400.2 million would be recovered through the part 171 annual fees, compared to \$348.9 million for FY 2002.

Table I summarizes the budget and fee recovery amounts for FY 2003. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2003
[Dollars in Millions]

Total Budget Authority	\$585.0
Less NWF	<u>- 24.9</u>
Balance	\$560.1
Fee Recovery Rate for FY 2002	<u>x 94.0%</u>
Total Amount to be Recovered For FY 2002	\$526.5
Less Carryover from FY 2001	<u>- 0</u>

Amount to be Recovered Through Fees and Other Receipts	\$526.5
Less Estimated Part 170 Fees and Other Receipts	<u>- 124.4</u>
Part 171 Fee Collections Required	\$402.1
Part 171 Billing Adjustments	
Unpaid FY 2002 Invoices (estimated)	2.9 2.4 ✓
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	4.3 4.3 ✓
Subtotal	<u>- 1.9</u> ✓
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. In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

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

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

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

and the results of the NRC's triennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, Nov. 1, 1990), 104 Stat. 2838, (CFOC) Additional

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

§170.31

the NRC is proposing to revise fee Category 157 of ~~§170.34~~ to cover all categories of radioactive waste import license applications and revise category 15.0. to remove the radioactive waste import license applications.

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 (\$276,652 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 (\$280,582 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were \$156 and \$152, respectively. The proposed increases are primarily due to the Government-wide pay increase in FY 2003. **ADD MORE??**

yes - once we settle on the Nos!

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

Still need verbiage

- 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	\$133.5M	\$35.2M
Overhead Salaries & Benefits, Program Travel and Other Support	62.0M	17.5M
Allocated Agency Management and Support	<u>118.0M</u>	<u>31.8M</u>
Subtotal	\$313.5M	\$84.5M
Less offsetting receipts	<u>-0.1M</u>	<u>-0.00M</u>
Total Budget Included in Hourly Rate	\$313.4M	\$84.5M
Program Direct FTEs	1132.9	301.0
Rate per Direct FTE	\$276,652	\$280,582
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$156	\$158

As shown in Table II, dividing the \$313.4 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1132.9) results in a

rate for the reactor program of \$276,652 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 (\$276,652) 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 \$84.5 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (301.0) results in a rate of \$280,582 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 (\$280,582) 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 the changes in the revised hourly rates. The full cost fees assessed under §§170.21 and 170.31 would be based on the proposed professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2003 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) would be adjusted to reflect the increase in the professional hourly rates from FY 2002. The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. 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. Fees that are greater than \$100,000 are rounded to the nearest \$1,000.

Modify this section to include preliminary review. disc. if use 2001 NRC for gov

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.

3. (insert attached) ✓

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

1. Revise the materials and reactor program FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates; ✓

3. *Revising Category 15.A. of §170.31 to include radioactive waste import licenses, and exclude these types of applications from Category 15.B.*

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

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 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), 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 all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which would have annual fee decreases.~~

The annual fees in §§171.15 and 171.16 would be revised for FY 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 \$348.9 million for FY 2002.

~~The proposed FY 2003 annual fees would increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 5.1 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from~~

~~approximately 3.6 percent for non-power reactors, to approximately 1.8 percent for the title II uranium recovery specific licenses.~~

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licenses, 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, and decreases in the numbers of licensees for certain categories of licenses.

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

TABLE III - FEES FOR THE RARE EARTH CLASS FOR FY 2002 AND FY 2003

[Dollars in Millions]

	<u>FY 2002</u>	<u>FY 2003</u>	<u>Difference</u>
Estimated part 170 fees	\$.50 million	\$.50 million	0 million
Total annual fee amount	<u>.21 million</u>	<u>.58 million</u>	<u>+.37 million</u>

Total

~~\$.71 million~~

\$ 1.08 million

\$.37 million



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)	\$3,217,000
Spent Fuel Storage/Reactor Decommissioning	264,000
Nonpower Reactors	54,900
High Enriched Uranium Fuel Facility	5,687,000
Low Enriched Uranium Fuel Facility	3,378,000
UF ₆ Conversion Facility	2,365,000
Uranium Mills	88,200
Transportation:	
Users/Fabricators	154,000
Users Only	14,400
Typical Materials Users:	
Radiographers	12,100
Well Loggers	4,600
Gauge Users	2,500

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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. Based on the FY 2001 Energy and Water Appropriations Act which 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, the total surcharge costs for FY 2003 will be reduced by about \$33.6 million. The total FY 2003 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V - SURCHARGE COSTS

[Dollars in Millions]

<u>Category of costs</u>	<u>FY 2003 Budgeted costs</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	\$10.4
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	3.1
2. Activities not assessed part 170 licensing and	

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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 licenses and others:		
a.	Regulatory support to Agreement States	13.5
b.	Generic decommissioning/reclamation (except those related to power reactors)	4.9
	Total surcharge costs	57.4
	Less 6 percent of NRC's FY 2003 total budget (less NWF and General Fund amounts)	-33.6
	Total Surcharge Costs to be Recovered	\$23.8

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As shown in Table V, \$23.8 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
	<u>Percent</u>	<u>\$.M</u>	<u>Percent</u>	<u>\$.M</u>	<u>\$.M</u>
Operating Power Reactors	74	2.0	78.9	16.6	18.6
Spent Fuel Storage/ Reactor Decomm.	---	---	7.2	1.5	1.5
Nonpower Reactors	---	---	0.1	0.0	0.0
Fuel Facilities	8	0.2	7.1	1.5	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	<u>---</u>	<u>---</u>	<u>0.6</u>	<u>0.1</u>	<u>0.1</u>
TOTAL SURCHARGE	100	2.7	100.0	21.1	23.8

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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.

2. *Revised Fuel Facility Matrix*
--- BSR --- see 99 rule as guide ✓

A. Fuel Facilities

— — — —

✓ The FY 2003 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately \$29.4 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory

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programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

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

would continue to be
The methodology ~~is~~ applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the basis 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 licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a numeric value in the matrix) reflects the

safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

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

TABLE VII - EFFORT FACTORS FOR FUEL FACILITIES

<u>Facility type</u>	Number of <u>facilities</u>	<u>Effort factors</u>	
		<u>safety</u>	<u>safeguards</u>
High Enriched Uranium Fuel	2	101 (36.9%)	101 (40.7%)
Enrichment	2	35 (12.8%)	20 (8.1%)
Low Enriched Uranium Fuel	3	90 (32.8%)	90 (36.3%)
UF ₆ Conversion	1	26 (9.5%)	16 (6.5%)
Limited Operations Facility	1	8 (4.4%)	11 (4.4%)
Others	1	10 (3.6%)	10 (4.0%)

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Applying these factors to the safety, safeguards, and surcharge components of the \$29.4 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	\$5,687,000
Uranium Enrichment	1,548,000
Low Enriched Uranium	3,378,000
UF ₆ Conversion	2,365,000
Limited Operations Facility	1,295,000
Others	1,126,000

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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 \$1.7 million. Approximately \$0.4 million of this amount would be assessed to DOE. The remaining \$0.8 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

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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 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 FY2002 final fee rule (— FR —)

As a result of the change in FY2002 final fee rule, adopted
~~The current methodology would allocate~~ 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. ~~These~~ 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	\$ 392,815
50% of generic/other uranium recovery budgeted costs	345,488
50% of uranium recovery surcharge	<u>62,885</u>
Total Annual Fee Amount for DOE	\$ 801,188

Annual Fee Amount for UMTRCA Title II Specific Licenses:

50% of generic/other uranium recovery budgeted costs	\$ 345,488
50% of uranium recovery surcharge	<u>62,885</u>
Total Annual Fee Amount for Title II Specific Licenses	\$ 408,373

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;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX - WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

<u>Facility type</u>	Number of <u>facilities</u>	<u>Level of Benefit</u>		<u>Total weight</u>	
		Category <u>weight</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	

Applying these factors to the \$0.8 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)	\$ 88,200

May change

Class II (solution mining)	73,900	<i>may change</i>
11e.(2) disposal	54,400	
11e.(2) disposal incidental	8,600	
to existing tailings sites		

In the FY 2001 final rule (66 FR 32478), the NRC revised §171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in §171.19(b), if the amounts collected in the first three quarters of FY 2003 exceed the amount of the revised annual fee, the overpayment will be refunded; the remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in §171.19(c).

if the amount collected in the first 3 quarters is less than the final revised annual fee, the remainder will be billed after the final FY2003 fee rule is published.

C. Power Reactors

The approximately \$307.1 million in budgeted costs to be recovered through FY 2003 annual fees assessed to the power reactor class would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2003 annual fee of \$2,953,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2003 spent fuel storage/reactor decommissioning annual fee of \$264,000. This would result in a total FY 2003 annual fee of \$3,217,000 for each power reactor licensed to operate.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2003, budgeted costs of approximately \$31.9 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 \$264,000 per licensee.

E. Non-power Reactors

Approximately \$219,500 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 \$54,900 for each licensee.

F. Rare Earth Facilities

The FY 2003 budgeted costs of approximately \$580,000 for rare earth facilities to be recovered through annual fees would be divided equally among the two licensees who have a specific license for receipt and processing of source material. The result is a proposed FY 2003 annual fee of \$290,000 for each rare earth facility.

of the two remaining rare earth facilities - one rare earth facility permanently closed operations, and requested that its license be amended to authorize decommissioning activities only. Prior to the beginning of FY 2003

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

Consequently, license is no longer subject to annual fees.

G. Materials Users

To equitably and fairly allocate the \$23.6 million in FY 2003 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

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

The constant is the multiple necessary to recover approximately \$17.8 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 \$65,200 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the \$1.3 million 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 \$10.2 million in FY 2003 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, 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 \$7.4 million, approximately 19 percent would be allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 81 percent would be allocated only to the 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 for each of the holders of quality assurance plans that authorize use and design/fabrication.

In summary, the NRC is proposing to --

1. Establish rebaselined annual fees for FY 2003;

2. Use a revised matrix for allocating the ^{total} annual fee amount for the fuel facility fee class to the licensees in that class.

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 Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976); and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). This court held that --

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which required that, for

FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. 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. The NRC's fee recovery amount for FY 2003 is 94 percent. To comply with this statutory requirement and in accordance with §171.13, the NRC is publishing the proposed amount of the FY 2003 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provides that --

(1) The annual fees be based on approximately 94 percent of the Commission's FY 2003 budget of \$585.0 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(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 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.

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.