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former edits

OGC edits

3/23/03

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**DRAFT**

Please provide Comments  
to Ann Norris, LFT/OCFO,  
by COB Wednesday,  
May 21, 2003.  
Thank you!  
[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:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 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 \$526.3 million.

**EFFECTIVE DATE:** (Insert date 60 days after publication).

**ADDRESSES:** The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic

Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (<http://ruleforum.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](mailto:CAG@nrc.gov).

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

FOR FURTHER INFORMATION CONTACT: 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. Response to Comments
- III. Final Action

- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis
- X. Small Business Regulatory Enforcement Fairness Act

I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs 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. In the Energy and Water Development Appropriation Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), Congress appropriated \$584.6 million to the NRC for FY 2003. The total amount NRC is required to recover <sup>in fees</sup> for FY 2003 is approximately \$526.3 million.

^ This sum includes ~~amount~~ \$24.9 million <sup>in fees</sup> appropriated from the NWF

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

## II. Response to Comments

The NRC published the FY 2003 proposed fee rule on April 3, 2003 (68 FR 16374) to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 27 comments dated on or before the close of the comment period (May 5, 2003) and *several* ~~one~~ *thereafter* ~~by~~ *31* additional comment *✓* by May 16, 2003, for a total of ~~27~~ *31* comments that were considered in this fee rulemaking. As such, these comments have been grouped according to similar issues, and are addressed in a collective response.

The comments and NRC's responses are as follows:

### A. Legal Issues.

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

**Comment.** Several commenters urged the NRC to provide licensees and the public with a more detailed explanation of the activities and associated costs that form the basis for NRC's fees. Some commenters stated that the NRC should provide specific accounting of the major elements that comprise the annual fee, including detailed information on the outstanding major contracts, their purpose, and their costs. Other commenters indicated that this information should also be available for part 170 fees, as it is difficult to understand exactly what is included in the hourly rate. One of these commenters also stated that more detailed information on the total costs associated with each component of reactor regulation and all other generic costs would allow stakeholders to provide more effective feedback on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility.

part 171  
(not all fees)

Several commenters raised concerns that the NRC could not specifically identify where resources are being applied, as the agency identified approximately 76 percent of the NRC's budget for recovery under part 171 and only 24 percent under the discrete fee provisions of part 170. These commenters stated this meant that the NRC could only identify 24 percent of its expenditures as directly supporting the licensees, and that neither NRC nor industry management can determine whether appropriate resources are being applied to appropriate priorities in such a case. These commenters further stated that the aggregation of a substantial portion of non-discrete expenditures to be recovered through part 171 fees makes it virtually impossible for licensees to understand and comment on the appropriateness of these expenditures.

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Several commenters raised concerns that the NRC could not specifically identify where resources are being applied, as the agency identified approximately 76 percent of the NRC's budget for recovery under part 171 and only 24 percent under the discrete fee provisions of part 170. These commenters stated this meant that the NRC could only identify 24 percent of its expenditures as directly supporting the licensees, and that neither NRC nor industry management can determine whether appropriate resources are being applied to appropriate priorities in such a case. These commenters further stated that the aggregation of a substantial portion of non-discrete expenditures to be recovered through part 171 fees makes it virtually impossible for licensees to understand and comment on the appropriateness of these expenditures, and that the NRC should revise parts 170 and 171 to discretely allocate generic program costs to individual dockets in order to improve the visibility of management oversight and associated accountability of these programs.

*Response.* Consistent with the requirements of OBRA-90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 94 percent of the NRC's FY 2003 budget authority, less the amounts appropriated from the NWF and the General Fund, from the various classes of licensees. The efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule since the NRC's budget and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities. Therefore, the NRC believes that ample information was available on which to base

*delete*  
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In addition to the information the proposed rule provided, as described above, the proposed rule also announced that the work papers supporting the proposed rule were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted FTE and contract costs at the planned accomplishment level for each agency activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

The NRC also has made available in the Public Document Room NUREG-1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003" (February 2002), which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. In addition, the NRC has made this document available on its public web site at

constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

*new*

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The NRC also has made available in the Public Document Room NUREG-1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003" (February 2002), which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. In addition, the NRC has made this document available on its public web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v18/#intro>. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule. Additionally, the contacts listed in the proposed fee rule were available during the public comment period to answer any questions that commenters had on the development of the proposed fees. *No such inquiries were received during the comment period. (#?) - did get inquiry*

With regard to the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, the NRC notes that it does recover as much of its budget as possible under part 170, consistent with existing Federal law and policy. The NRC assesses part 170 fees under the IOAA, and consistent with OMB Circular A-25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Generic costs that do not provide special benefits to identifiable recipients can not be recovered under part 170. The NRC does clearly set forth in its workpapers the components of these generic costs and how those costs are recovered through annual fees.

*new*

B. Specific Part 170 Issues.

*OK - Rates*

1. Increase in Hourly Fees

*To recover the costs of providing special benefits to identifiable applicants and licensees*

*ok*

**Comment.** Several commenters raised concerns with the proposed increase to \$158 for the hourly rate for the materials program. One commenter stated that there seems to be no reason that the hourly rate for the materials program is higher than the hourly rate for reactors. This commenter also thought that the rates are out of line with rates paid by industry for safety professionals and managers.

*redundant?*

**Response.** The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The hourly rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v18/#intro>. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule. Additionally, the contacts listed in the proposed fee rule were available during the public comment period to answer any questions that commenters had on the development of the proposed fees.

*No such inquiries were received during the comment period. (?) not correct*

## B. Specific Part 170 Issues.

### 1. Increase in Hourly Fees *Rates*

**Comment.** Several commenters raised concerns with the proposed increase to \$158 for the hourly rate for the materials program. One commenter stated that there seems to be no reason that the hourly rate for the materials program is higher than the hourly rate for reactors. This commenter also thought that the rates are out of line with rates paid by industry for safety professionals and managers.

**Response.** The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The hourly rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information technology overhead costs, as well as general and administrative costs, such as rent, utilities, supplies, and payroll and human resources staffs. These hourly rates are based on budgeted costs for the reactors program and the materials program. Since these budgeted costs may be different for each program, this may result in different rates for the reactors and materials programs, *that are not developed in relation to one another but do not necessarily track with private sector rates.*

*for the reactor program attributable to ... we'd prefer to not get into this level of detail - it gets a*

A major reason for the four percent increase in the hourly rate for the materials program is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase <sup>similarly</sup> for the reactor program, the increase is offset by a reduction in the average overhead cost per direct FTE. The hourly rates, coupled with the direct contract costs, recover through part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA. The revised hourly rates plus direct contract costs recover through part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through part 170 fees, as required <sup>mandated</sup> by OBRA-90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. For part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

*little complicated*

## 2. Project Manager Billings Issues

*Comment.* Several commenters expressed concern with the increase in charges for Project Manager (PM) time to uranium recovery licensees and other materials licensees. Some of these *would like clarification* commenters thought that ~~the proposed rule should have explained the status of the NMSS policy change that was implemented in July 2001, which states that a PM's costs are not billed to the licensee as part 170 fees if that PM spends less than 75 percent of his/her time in any two-week period on duties to support that licensee.~~ Other commenters suggested that <sup>after an initial wrap up</sup> part 170 charges <sup>these charges recently</sup> for PM duties to uranium recovery licensees had increased even though duties related to the sites had not changed, and stated that PM's time should not be charged to part 170 fees, whenever possible. Some commenters thought the Commission should reduce the impact of the hourly rate increase on uranium recovery licensees by doing everything possible to reduce the amount of time spent by staff working on licensing issues related to uranium recovery

*They suggest that*

licenses. This could be accomplished through the streamlining of the regulatory process, including delegating regulation of wellfields to the States through ~~a program~~ <sup>in-site lease</sup> of Memorandums of Understanding and more reliance on Safety and Environmental Review Panels and performance based licensee <sup>ing</sup>.

*Commenter stated is at 75% or more, the comment says less than 75% + response says more than 75%, this means I need to say 75% or more, if it is exactly 75% it is not clear how it should be treated*

Response. The NMSS modified its Policy for Project Management Fee Billing effective July 29, 2001. That policy states that only if an NRC employee spends more than 75 percent of his/her time in any two-week period performing duties to support a facility's license or certificate review, is that person considered a PM for full-cost fee billing purposes. (Full-cost fee billing causes a prorated portion of a PM's indirect time to be charged to the licensee. The modified NMSS policy reduced the number of PMs whose indirect time is billed.) The NRC has not changed that policy, nor how it is being implemented. Since the FY 2003 proposed fee rule did not propose to change this policy, that rule did not address its implementation status. If licensees have specific questions about the charges reflected in particular invoices, they may request additional details from the NRC and the NRC will provide ~~all available information in~~ <sup>more detailed</sup> support of the bill. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

*additional information*

The NRC only charges fees to uranium recovery (or any other) licensees <sup>based on its</sup> when necessary to <sup>costs</sup> comply with applicable legislation, regulations, and policies. Regarding the commenters suggestions about reducing staff time <sup>devoted to regulatory</sup> charged to uranium recovery facilities, the NRC notes, as <sup>regulatory</sup> above, that the manner in which NRC carries out its <sup>fixed</sup> responsibilities are not addressed in this final rule, as those issues are outside the scope of this rulemaking. The purpose of this <sup>is to promote common</sup>

*Nevertheless, the Commission strives to ensure that all of its ~~regulatory~~ efforts are needed to carry out its health and safety ~~mission~~ <sup>responsibilities</sup> ~~is ~~substantially~~ ~~at~~ modifiable its regulatory regime to reduce unnecessary burdens on the regulated community.~~*

rulemaking is for the NRC to establish fees recover the required percentage of the approved budget in accordance with OBRA-90, as amended.

*and Waivers*

3. Fee Exemptions for Special Projects

*Comment.* One commenter raised a number of concerns with NRC's fee waiver policy. This commenter stated that this policy is flawed, unworkable, and counterproductive to regulatory efficiency and effectiveness. In particular, this commenter stated that <sup>NRC's</sup> ~~OCFO~~ fee waiver policy is not consistent with the definitions of part 170 and part 171 fees as described in the FY 2003 proposed fee rule. The commenter stated that ~~OCFO~~ had been charging part 170 fees for documents that did not fall under the description, in the FY 2003 proposed fee rule, of documents for which part 170 fees should be assessed. This commenter <sup>challenged as flawed</sup> discussed various ~~flawed~~ reasons that OCFO had previously given to deny fee waivers in the past. The commenter discussed the advantages of cooperative efforts between NRC and industry, and expressed concern that OCFO positions blocked this cooperation. The commenter went on to suggest that NRC's fee waiver policy be changed to eliminate disincentives for industry to be proactive in addressing generic regulatory issues.

*Response.* The NRC did not propose to revise its existing fee waiver policy in this rulemaking. The NRC clarified its fee waiver policy in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), and responded extensively to comments very similar to the ones summarized above in the <sup>and the Commission's position has not changed</sup> response to comments section of that final rule. In summary, those responses to ~~comments~~ stated that the NRC has consistently applied its policy of waiving the part 170 fees for special projects submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements, and assessing part 170 fees for the review of special projects that are submitted

for other purposes, including those that support industry generic improvements. The NRC finds no justification for granting a part 170 fee waiver to an industry organization seeking an NRC approval of an industry initiative, ~~unless~~ <sup>submission</sup> the initiative will be used for NRC's generic regulatory improvements, and the initiative was submitted specifically for that purpose. ~~In the latter case,~~ <sup>Fee waivers are</sup> the NRC's review and approval is part of the process of developing the NRC's generic regulatory program, and therefore the review activities are similar to other NRC generic regulatory activities whose costs are recovered through part 171 annual fees.

*the only appropriate where*

*of the industry initiative*

The NRC does not believe its fee waiver policy discourages cooperative efforts between the agency and industry, and ~~believes~~ <sup>that its</sup> the assessment of part 170 fees for special projects is fully consistent with the NRC's policies on industry initiatives. Therefore, the NRC is not revising its fee waiver policy ~~in this final rule.~~ Under the existing fee waiver criteria, NRC will waive the review fees for special projects submitted for the purpose of supporting NRC's regulatory improvements as long as the NRC staff agrees <sup>at the time of submission</sup> that it will be used by the NRC in developing or improving its regulatory framework. The NRC encourages any special project applicant who believes that its proposal will help improve NRC's regulatory process to discuss its proposal with the cognizant NRC program office staff prior to requesting a fee waiver from the Chief Financial Officer.

C. Specific Part 171 Issues.

1. Annual Fees vs. Hourly Fees

*The NRC is not prepared as the commenter suggests, that fees be waived whenever a nuclear industry organization submits a proposal for generic regulatory improvement. Fee waivers will be granted only if the NRC determines the*

136 Cong. Rec. H 12692-35

H.R. Conf. Rpt. No. 81  
daily ed. October 26 1990  
2d Sess. 1990

~~Comment.~~ One commenter stated that it prefers annual fees to hourly fees, since it is easier to plan and allocate resources related to annual fees, while hourly fees are more unpredictable and more difficult to incorporate into a licensee's financial plan.

**Response.** While the NRC appreciates the concerns raised by this commenter, the agency notes that its collection of part 170 fees is consistent with Federal law <sup>and policy</sup> ~~and policy~~. The NRC assesses part 170 fees under the Independent Offices Appropriations Act of 1952 (IOAA), which allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. In addition, the Conference Report <sup>of OBRA-90</sup> ~~of OBRA-90~~ specifically states that the Conference Committee "... expects the NRC to continue to assess fees under the [IOAA] to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives." <sup>all persons</sup> ~~and further full citation~~ The NRC has received additional direction on this issue in the Office of Management and Budget (OMB) Circular A-25, in which OMB states it is Federal policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The NRC abides by this direction by charging part 170 fees to recover the costs of providing special benefits to identifiable recipients. Further, the NRC notes that, as required by OBRA-90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections.

2. Annual Fees for Materials Users, Including Small Entities

**Comment.** Two nuclear density gauge users commented that their fees are too high, and create a significant financial burden on small business owners. One of these users indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that these activities are essential to support projects it designs and monitors. With respect to

H.Rpt.

the NRC's upper fee level for small entities, this commenter stated that the broad revenue range encompassing \$350,000 to \$5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, <sup>they urge - to</sup> the NRC should consider adding more tiers for small businesses to reduce the license fee burden on smaller entities. The other commenter stated that license fees make it difficult for small projects to recover expenses, and requested <sup>5</sup> smaller fee structure.

*Chief Financial Officers Act of 1990*

*Response.* The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fee every two years, in the same years in which it conducts the biennial review of fees as required by the ~~CFOA~~ <sup>CFOA</sup>. Accordingly, as discussed in the FY 2003 proposed fee rule, this year the NRC re-examined the small entity fees, and does not believe that a change to the small entity fee is warranted for FY 2003. The NRC last revised its small entity fees in FY 2000 (65 FR 36936; June 12, 2000), when it increased the small entity annual fee and the lower tier small entity fee by 25 percent. For FY 2003, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

*associated with regulatory activities*

The NRC has responded to similar comments from small entities in previous fee rulemakings, both from materials users and other licensees, regarding the impact of fees on industry. In summary, the NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA-90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the annual

fees for each class of license, including materials users, reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts it is required to address by law.

Based on the provisions of the Regulatory Flexibility Act (RFA), the NRC provides reduced annual fees for licensees who qualify as small entities under the NRC's size standards. The materials users class has the most licensees who qualify for these reduced fees of any class. As such, the materials user class receives the largest amount of annual fee reductions of any class. The FY 2003 total estimated fee amount that will not be collected from licensees who pay reduced annual fees based on their small entity status is approximately \$4.5 million, which must be collected from other NRC licensees in the form of a surcharge. Further reductions in fees for materials users would create an additional fee burden on other licensees, thus raising fairness and equity concerns.

As stated in 10 CFR Part 2.810, NRC size standards, the NRC uses the Small Business Administration's (SBA) definition of receipts. Based on the SBA definition, revenue from all sources, not solely receipts from NRC licensed activities, are considered in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards.

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid by other NRC licensees in order to comply with the OBRA-90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA-90 and the RFA requirement for the agency to examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC is not providing any modification to its small entity fee structure, nor any further reduction in annual fees beyond that already provided for small entities. The NRC plans to re-examine the small entity fees again in FY 2005.

### 3. Annual Fees for Uranium Recovery Licensees

*Comment.* The NRC received several comments regarding annual fees for uranium recovery licensees. These comments supported the reduction in annual fees for these facilities that resulted from the decision to rebaseline annual fees, and therefore also supported the decision to rebaseline <sup>fees</sup> for FY 2003. One commenter also supported the continued implementation of last year's determination that the Department of Energy (DOE) must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. However, despite the proposed reductions, these commenters still expressed concerns about these fees and stated that there continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory ~~oversight~~ program and the benefit derived from such services. These commenters believe there

is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort. Thus, the commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs.

Additionally, the commenters stated that the NRC has failed to adequately <sup>address</sup> deal with the issue of decreasing numbers of uranium recovery licensees. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. These commenters urged NRC to continue its efforts to seek cost efficiencies through its annual reviews conducted as part of the budget process. One commenter stated that uranium recovery licensees continue to be subject to unnecessary costs due to overlapping <sup>Federal</sup> jurisdictions. The commenter stated that in non-Agreement States, the NRC should accept the groundwater quality assessments conducted by the state or the Environmental Protection Agency rather than performing duplicative environmental assessments. Several commenters suggested that the agency proceed expeditiously with extension of the reactor oversight process for these and other facilities, as a risk-informed, performance-based oversight process that recognizes the inherent safety of these operations should further reduce unnecessary <sup>regulatory</sup> burden. <sub>5</sub>

*Response.* The NRC has responded to the similar concerns raised by commenters in several previous fee rulemakings. First, in response to the specific suggestions about how the NRC should regulate these licensees or operate more efficiently, the NRC again notes that the purpose of this rule is to recover the required percentage of its FY 2003 budget authority, and

that the manner in which the NRC carries out its regulatory activities are outside the scope of this rulemaking.

*as noted previously*

The NRC must assess annual fees to NRC licensees to recover the budgeted costs not recovered through part 170 fees and other receipts, although it recognizes that this does present some fairness and equity issues as costs must be recovered from licensees for activities that do not directly benefit them. To address these fairness and equity concerns, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005.

*The Commission is greatly concerned*

~~In response to concerns raised about the issue of decreasing numbers of licensees, the NRC has conducted numerous analyses and examined the effect this has on annual fees.~~

*and its implications for NRC fees*

Although a decreasing licensee base is only one of several factors affecting annual fees, it presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which <sup>by statute</sup> must recoup its budgeted costs from the licensees it regulates. In

~~the wide range of scenarios the NRC evaluated during its analyses, the potential remedies to this problem involved establishing arbitrary fee caps or thresholds for certain classes of~~

licensees. Other potential solutions involved combining fee categories. As noted previously, given the requirements of OBRA-90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. Combining fee categories would also have the potential to increase the annual fees for certain licensees in the new combined category to cover part of the cost for the licensees whose fees were reduced by this action. ~~The NRC considers that~~ alternatives involving caps or thresholds, and combining fee

*OK, though we made these statements previously (as a response to community - Note: as written you will write FOIA request for all of our analyses of issue of fee material might have to be released to the public. Thus, the editors*

*hope to mitigate so, I've left the original response. If you still want US to change this just let US know. Also, new comment ties this concern more to fairness & equity.*

categories, raise fairness and equity concerns. As such, the Commission has not adopted any of these approaches. However, the NRC has <sup>recognized</sup> the concerns expressed regarding ~~the issue~~ and will continue its efforts to seek cost efficiencies through its annual review conducted as part of the budget process. ~~without~~ <sup>and reduce regulatory burdens,</sup> ~~without compromising its~~ <sup>Commitment to public health and safety.</sup>

4. Annual Fees for Power Reactor Licensees

**Comment.** One commenter stated that there is insufficient basis to support the required costs to the power reactor licensees for activities not directly attributable or beneficial to their operation. This commenter stated that utilities should be responsible for fees directly associated with agency expenditures on power reactor regulation, and that cost allocations should be justified and equitably proportioned.

**Response.** The part 171 power reactor annual fees are established to recover the costs for generic activities related to power reactors such as rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (e.g., <sup>most</sup> allegations/~~contested~~ hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders, etc.). The annual fees for each class also includes a share of the total surcharge costs to be recovered through annual fees assessed to NRC licensees. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensees, as well as activities that are exempt from part 170 fees <sup>by</sup> based on law or Commission policy. The surcharge is required in order for NRC to meet <sup>its</sup> the statutory <sup>fee recovery</sup> requirement of OBRA-90, as amended, that ~~almost all of~~ NRC's budget be recovered through IOAA and annual fees. To address fairness and equity concerns raised by NRC related to charging NRC license holders for these expenses that do not

*in previous rules in response to comments about disparity between costs + benefits, we've responded as I have here - i.e., we recognize there are fairness equity concerns, but by reducing recovery amount, we*

*Is there anything that can be said that would address the specific concern that there is a disparity between costs + benefits. This just seems to give the technical method for calculating part 171 fees.*

directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005.

*90% NRC has provided an adequate*

The agency workpapers supporting both the proposed and final fee rules show the budgeted costs for each activity at the NRC's planned accomplishment level, and the classes of licenses to which these costs are allocated. Furthermore, the workpapers show by class the total costs allocated, and the estimated part 170 collections. The annual fees are established to recover the difference between the NRC's total recoverable budgeted costs (less the Nuclear Waste Fund and General Fund) and the estimated part 170 collections, in accordance with OBRA-90, as amended.

##### 5. Annual Fees for Fuel Facilities Licensees

*NOTE: Not responsive to comment. In any event said elsewhere.*

*Comment.* Several commenters expressed concerns with the annual fees for fuel facilities licensees. One commenter stated that these fees are unreasonably high and not in accord with NRC's Strategic Plan: Fiscal Year 2000 - Fiscal Year 2005. Other commenters did not understand why there was a significant discrepancy between the increase in annual fees for fuel fabricators (43 percent) in comparison to power reactors (15 percent), when much of the annual fee increase was attributed to the costs of security-related activities and these activities are similar for both types of facilities. These commenters requested that NRC review this discrepancy and consider revisions to more equitably allocate these costs. Another commenter expressed concerns about the annual fees for gaseous diffusion plants (GDPs), stating that it

did not believe that the annual fee for a GDP should be equal to or more than the annual fee for a power reactor. This commenter suggested that NRC reevaluate its methodology to establish the FY 2003 fees with the objective of achieving a fee structure that is fair and equitable when viewed in its entirety. Another commenter stated that low-enriched uranium fuel facilities constitute a very small part of the nuclear fuel cycle and pose only minimal risk, and that their facility operated in a very competitive international market and so the magnitude of the fee increase represents a serious economic burden. The commenter asked that the proposed fees for fuel facilities be reviewed and that the amount of the increase be reduced to a more reasonable level (on the order of 10%) to be consistent with other facilities and the general increasing costs of NRC operations.

*As discussed above,*

*Response.* The part 171 annual fees for each class of licensees are established to recover the costs for generic activities related to that class of licensees, including rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees. ~~The NRC believes~~ This methodology is consistent with all applicable laws, regulations, and policies. Because the costs for one class of licensees may increase or decrease at different rates than the costs for other classes of licensees, fees for different classes will increase or decrease at different rates. The NRC has considered capping fee increases for classes of licensees, but has not chosen to do so for fairness and equity reasons.

The NRC appreciates the concerns raised about fee predictability and stability. In order to recover its budgeted annual costs in compliance with the OBRA-90, as amended, the NRC annually promulgates a rule establishing licensee fees. In light of concerns about annual

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

*Schedule by Commission policy is now*  
N

is three years. Based on the change in the magnitude of the budget to be recovered through fees, the Commission determined that it was appropriate to rebaseline its part 171 annual fees in FY 2003. Rebaselining fees resulted in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities), and decreased annual fees for two classes (non-power reactors and uranium recovery). For the small materials users and transportation classes, some categories of licenses will have increased annual fees and others will have decreased annual fees.

Regarding the comment that fees to fuel facilities represent an economic burden, since FY 1991 the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the provisions of the RFA. <sup>Granting</sup> To grant fee relief to the fuel facility licensees on the basis of economic considerations could set an untenable precedent for the NRC with the potential to unravel the stability and viability of the entire fee system. Not only would other classes of licenses be required to subsidize fuel facilities through increased fees, but other categories of licensees may also request similar treatment based on analogous economic considerations. Thus, it would be

*Policy reflected in Regulatory Flexibility Act.*

need to explain why fees went up  
substantially for these licensees --  
e.g. security. can we say anything about  
projected fees for these licensees in FY04?  
Unfortunately, no.

difficult to develop a rationale for waiving the fees for one class of licensees while denying similar requests from other NRC licensees which may also be experiencing economic downturns.

#### 6. Annual Fees for Spent Fuel Storage/Reactor Decommissioning

**Comment.** One commenter stated that the proposed 29.3 percent increase in annual fees for spent fuel storage/reactor decommissioning licensees is not equitable and places an undue burden on this particular class of licensees, which do not generate revenue through the sale of electricity and do not have a guarantee of recovering additional costs by petitioning local public utility commissions. The commenter further stated that rapidly rising annual fee increases for spent fuel storage/reactor decommissioning licensees places undue budget constraints that could affect the resources available for performing plant decommissioning activities.

**Response.** The NRC has responded to similar comments in previous rulemakings. Annual fees for the classes of licensees are based on the budgeted costs for the classes, as well as a surcharge to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, activities that are exempt from part 170 fees based on law or Commission policy, and those activities that support NRC operating licensees and others. Since budgeted costs for one class of licensees may rise or fall at different rates than for other classes of licensees, so will annual fees. The increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since FY 2002. Recovering the costs associated with spent fuel storage and reactor

any particular reason why? Yes, a number of reasons, 22 but we'd prefer to not get into that level of detail here

decommissioning from operating power reactors, reactors in decommissioning if they have fuel on site, and those part 72 spent fuel storage licensees who do not hold a part 50 license, is consistent with the intent of OBRA-90 that NRC's resources be allocated among licensees or classes of licensees, so that the licensees who require the greatest expenditure of the NRC's resources will pay the greatest annual fee. Further, as stated above, the Commission believes it would be inequitable to grant fee relief to one class of licensees (except to address small entity issues in accordance with the *Regulators Flexibility Act* BFA) on the basis of economic considerations, since this class would then need to be subsidized by other classes of licensees.

D. Other Issues.

1. Security Costs

*Comment.* The majority of comments did not support the NRC collecting security-related costs from licensees. These commenters noted that the FY 2003 NRC budget includes \$29.3 million for homeland security activities, and stated that these activities should be funded through the General Treasury as part of the nation's protection of critical infrastructure. Some of these commenters also stated that significant security costs are being incurred for nuclear vulnerability assessments without due consideration of the evaluated threats or rigor of the methodology for conducting these assessments, which is not the best way to allocate the nation's resources in defending against terrorist attacks. Other commenters noted their belief that there is overlap and duplication of functions in Nuclear Security and Incident Response with those of other Federal agencies, particularly the Department of Homeland Security. One comment suggested

Nonetheless, we are addressing the issues raised regarding the costs of vulnerability assessment and NRC's relationship with the Department of Homeland Security and Secret Service.

Although the requested fee relief is not available for FY03,

that the increased fees for FY 2003 did not appear to reflect a consideration for the substantial work and engineered solutions that have already been implemented in the area of security.

Response. The NRC appreciates the concerns raised by commenters with regard to homeland security costs being funded through licensee fees. The NRC notes that the President's FY 2003 budget requested that NRC's funding for homeland security activities be excluded from the fee base, as was the case in FY 2002. However, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), included NRC's budget for homeland security activities on the fee base. Therefore, the FY 2003 fees must include the \$29.3 million budgeted for NRC's homeland security activities. It is the Commission's opinion that licensees should be treated in the same fashion as other owner/operators of critical infrastructure, and as such, the NRC staff will continue to use every opportunity to request funding from the General Funds of the Treasury for the agency's security activities and to inform Congress of the effect that funding homeland security activities from the fee base has on licensees.

that do not generally pay user fees for homeland security costs. Federal agency.

In response to the comments that expressed concern regarding how the NRC is expending homeland security funds, as stated previously, the NRC's budgets and manner in which the NRC carries out its activities are not within the scope of this rulemaking. (Additional comments on the NRC's budget are summarized below.)

2. NRC Budget

The NRC notes that S. 1043, the Nuclear Infrastructure Security Act of 2003, recently approved by the Senate Committee on Environment and Public Works, would provide that amounts appropriated to the NRC for homeland security activities would be excluded from the fee base except for costs associated with fingerprinting and background checks and security inspections.

insert p 24

The NRC recognizes that the cost of preparing vulnerability assessment is expensive, but it is imperative that in this evolving threat environment, the NRC has an obligation to reassess the adequacy of existing safeguards and security programs and to develop additional safeguards and security requirements, as warranted. The NRC is closely coordinating its efforts with the Department of Homeland Security and other Federal agencies to best ensure our efforts are consistent with Federal law and policy. While the NRC recognizes that the Federal Government is conducting a number of vulnerability assessments, some of which address critical infrastructure, the facilities regulated by the NRC present a distinct set of security concerns that must be the subject of focused reviews. While the NRC recognizes that there may be limited redundant efforts among the agencies with homeland security responsibilities, in part because of the need to take rapid action, the NRC is striving to carry out its security responsibilities in a manner that does that does needlessly replicate the efforts of others.

**Comment.** Many commenters offered suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise more efficiently perform activities. Commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process and risk-informed changes to inspection, assessment, and enforcement processes, should result in reduced fees. One commenter suggested that increased cooperation between the NRC and industry could increase efficiency and conservation of limited resources.

**Response.** As stated in the response to comments concerning how NRC is expending homeland security funds and elsewhere, the NRC's budgets and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' suggestions concerning NRC's budget and the use of NRC resources. The NRC's budgets are submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

However, it should be noted that the NRC's budget reflects its efforts to be effective and efficient. In an effort to improve its efficiency and effectiveness, over the years the NRC has eliminated programs, improved processes, reduced overhead requirements, and implemented efficiencies and cost savings. The Commission continues to search vigorously for additional opportunities to streamline its operations and to achieve efficiencies.

### 3. Cost Recovery for Agreement State Activities

**Comment.** One commenter stated that it supports the approach to allocate Agreement State Program activities to user fees, rather than the General Fund. Another commenter suggested the opposite approach, and stated that the costs for activities like Agreement State Programs should not be allocated to user fees, but rather paid for from the General Fund.

**Response.** The FY 2003 proposed fee rule did not propose changes to how the NRC recovers costs of Agreement State Program activities, <sup>nor does</sup> and this final rule also ~~does not~~ make any changes with regard to recovery of these costs. The Commission has the authority <sup>to</sup>, but as a matter of policy does not, <sup>devote</sup> assess part 170 fees for specific services rendered to an Agreement State. Agreement States <sup>devote</sup> expend significant monetary and staff resources to radiation control programs, and this effort assists the NRC and other Federal agencies in protecting public health and safety. The NRC costs for these Agreement State activities are funded through a surcharge, which is allocated to the license classes on a prorated basis. In order to address fairness and equity concerns regarding licensees paying for services from which they do not directly benefit, the FY 2001 Energy and Water 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.

In response to the comment that Agreement State Program activities should be funded from the Treasury's General Fund, the NRC notes that this is outside the scope of this rulemaking since, as stated above, the NRC must collect fees to recover the required percentage of its approved budget to comply with OBRA-90, as amended.

4. Fee Increase Communication and Timing

**Comment.** Several commenters suggested that the NRC communicate the potential magnitude of fee increases earlier in the process. The commenters stated that this communication would allow licensees to forecast and mitigate financial impacts. These commenters expressed disappointment that the NRC gave its licensees no warning that significant increases were being contemplated. Several commenters expressed concern that NRC fee increases are seen by licensees almost a year after their budgets have been initially set, and suggested that NRC shift its process by one year (e.g., the 2003 fee collection would be the 2004 <sup>fee</sup> projection). One commenter specifically requested that NRC review and forecast ongoing costs and fees over the next five years so that licensees can make accurate business forecasts. One commenter stated that NRC's method of collecting retroactive fees during the last government quarter for the previous three quarters will create a significant and unanticipated negative financial impact.

This year commenters did not expect NRC approximations to be until the next February 20, 2003.

**Response.** The NRC appreciates the concerns raised by these commenters. However, the agency believes as a matter of law (OBRA-90, as amended) and policy that it should collect its

Mandated level of fees

<sup>Estimated</sup> FY budget by the end of the FY. Hence, the agency needs to collect the required percentage of its FY 2003 budget by September 30, 2003. The NRC does make every effort to issue its proposed and final fee rules to give as much time as possible for licensees to plan for fee increases. However, the agency must ensure that it fully complies with all applicable legislation, regulations, and policies, as well as perform the required calculations, in a relatively short time each year to produce its fee rules. Because the NRC does not know in advance what its future budgets and cost recovery requirements will be, the agency believes it is not practicable to set fees based on future budgets. The NRC will continue to strive to issue its fee regulations as

NRC must

statute

Non would such an approach be consistent with the statutory mandate 27

Proposed budgets to be submitted to the OIG for review before the budget is submitted to the President

early in the process as is practicable in order to give as much time as possible for licensees to plan for changes in fees.

### III. Final Action

The NRC is amending 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. The NRC's total budget authority for FY 2003 is \$584.6 million, of which approximately \$24.7 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must recover approximately \$526.3 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 \$46.8 million more than the amount estimated for recovery in FY 2002.

The NRC estimates that approximately \$127.6 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 \$396.8 million will be recovered through the part 171 annual fees, compared to \$345.6 million for FY 2002.

A primary reason for the increase in total fees, as well as the annual fee amount, for FY 2003 compared to FY 2002 is that the amount to be recovered for FY 2003 includes \$29.3 million for homeland security activities, whereas the FY 2002 funding for homeland security was

excluded from fees. While the President's FY 2003 budget requested that NRC's funding for homeland security activities continue to be excluded from the fee base, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), included NRC's budget for homeland security activities in the fee base. Therefore, the FY 2003 fees include the \$29.3 million budgeted for NRC's homeland security activities. Other reasons for the fee increases include the 2003 Federal pay raise, and the increased workload for new reactor licensing activities and reactor license renewal.

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                                 | \$584.6        |
| Less NWF   | <u>- 24.7</u>  |
| Balance  | \$559.9        |
| Fee Recovery Rate for FY 2003                          | <u>x 94.0%</u> |
| Total Amount to be Recovered For FY 2003               | \$526.3        |
| Less Carryover from FY 2002                            | <u>- 0</u>     |
| Amount to be Recovered Through Fees and Other Receipts | \$526.3        |

|   |                |
|---|----------------|
| Less Estimated Part 170 Fees and Other Receipts                       | <u>- 127.5</u> |
| Part 171 Fee Collections Required                                     | \$398.8        |
| Part 171 Billing Adjustments  |                |
| Unpaid FY 2003 Invoices (estimated)                                   | 2.4            |
| Less Payments Received in FY 2003 for Prior Year Invoices (estimated) | <u>- 4.3</u>   |
| Subtotal  | <u>- 1.9</u>   |
| Adjusted Part 171 Collections Required                                | \$396.8        |

The FY 2003 final fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2003 will 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 will be due on the effective date of the FY 2003 final rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the final FY 2003 rule will 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 will be billed for the annual fee at the FY 2003 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2003 final fee 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](mailto:fees@nrc.gov). The NRC plans to publish the final fee rule in June 2003. 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 amending 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 revising 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 revising 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 amendments are as follows:

**1. Hourly Rates**