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

1/9 SL

January 7, 2003

January 6, 2004

MEMORANDUM TO: Ann Norris
Office of the Chief Financial Officer

FROM: Michael T. Lesar, Chief / C. Shepard for
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: REVIEW OF DRAFT PROPOSED RULE, "REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2004" (RIN AH37; PARTS 170 AND 171)

The Office of Administration has reviewed the subject rulemaking and we have attached a marked copy of the rule that presents our comments.

We have forwarded a copy of the proposed rule to the Records Management Branch, Office of the Chief Information Officer, for their comment and concurrence concerning the paperwork management aspects of this rulemaking action. We have requested that they respond directly to you.

When this document is forwarded for signature and publication, please have a member of your staff include a 3.5-inch diskette that contains a copy of the document in WordPerfect as part of the transmittal package. The diskette will be forwarded to the Office of the Federal Register and the Government Printing Office for their use in typesetting the document. Also, please include a copy of the Congressional letters on a diskette. This diskette will be forwarded to the Office of Congressional Affairs. Please provide the ADAMS accession numbers for the rule and Congressional letters. Also, please give RDB:DAS:ADM owner rights in the ADAMS profile for each document.

A Regulatory History must be created for this proposed rule once it has been published in the Federal Register. The Regulatory History should be created in ADAMS. In the profile of each document related to the Regulatory History, use the Regulation Identifier Number (RIN) as the Case/Reference Number (RIN-AH37). This will make it easier to combine all the documents into a folder under ADAMS once the proposed rule has been published.

If you have any questions concerning this matter, please have a member of your staff contact Betty K. Golden at 415-6863 (BKG2), or me at 415-7163 (MTL).

Attachments: As stated

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH37

Revision of Fee Schedules; Fee Recovery for FY 2004

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 92 percent of its budget authority in fiscal year (FY) 2004, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2004 is approximately $545.6 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 2004 fees by September 30, 2004, requests for extensions of the comment period will not be granted.

Replace Addresses section with attached

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 301-415-1966). Comments may be faxed to (301) 415-1101.

Comments may also be submitted via the NRC's rulemaking website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the NRC's 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

INSERT ON PAGE 2

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH37 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking web site at http://ruleforum.llnl.gov. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal http://www.regulations.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at http://ruleforum.llnl.gov.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this site, the public can gain entry into the

NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

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: Ann Norris, telephone 301-415-7807; or Tammy Croote, telephone 301-415-6041; 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

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

no

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 92 percent of its FY 2004 budget authority, less the amounts appropriated from the NWF through fees. In the Energy and Water Development Appropriation Act, 2004, contained in the Consolidated Appropriations Resolution, 2004 (Pub. L. 108-137), Congress appropriated $626.1 million to the NRC for FY 2004. This sum includes $33.1 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2004 is approximately $545.6 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 92 percent of its FY 2004 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 $626.1 million, of which approximately $33.1 million has been appropriated from the NWF. Based on the 92 percent fee recovery requirement, the NRC must recover approximately $545.6 million in FY 2004 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 2004 is $19.3 million more than the amount estimated for recovery in FY 2003.

The FY 2004 fee recovery amount is reduced by a $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 fee rule was published. This leaves approximately $542.1 million to be recovered in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $137.8 million will be recovered in FY 2004 from part 170 fees and other offsetting receipts. For FY 2004, the NRC also estimates a net adjustment of approximately $2.0 million for FY 2004 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2004 for FY 2003 invoices. The remaining $402.3 million would be recovered through the part 171 annual fees, compared to $399.7 million for FY 2003.

A primary reason for the increase in total fees for FY 2004 is that the amount to be recovered for FY 2004 includes $51.1 million for homeland security activities, compared to $29.3 million in FY 2003. Other reasons for the fee increases include the 2004 Federal pay raise and the increased workload for reactor license renewal and new reactor licensing.

Table I summarizes the budget and fee recovery amounts for FY 2004. 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 2004

[Dollars in millions]

| | |
|---|---|
| Total Budget Authority | $626.1 |
| Less NWF | - 33.1 |
| Balance | $593.0 |
| Fee Recovery Rate for FY 2004 | x 92.0% |
| Total Amount to be Recovered For FY 2004 | $545.6 |
| Less Carryover from FY 2003 | - 3.5 |
| Amount to be Recovered Through Fees and Other Receipts | $542.1 |
| Less Estimated Part 170 Fees and Other Receipts | - 137.8 |
| Part 171 Fee Collections Required | $404.3 |
| Part 171 Billing Adjustments | |
| Unpaid FY 2004 Invoices (estimated) | 2.7 |
| Less Payments Received in FY 2004 for Prior Year Invoices (estimated) | - 4.7 |
| Subtotal | - 2.0 |
| Adjusted Part 171 Collections Required | $402.3 |

The FY 2004 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 2004 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 2004 final rule. For these licensees, payment would be due on the effective date of the FY 2004 rule. Those materials licensees whose license anniversary date during FY 2004 falls before the effective date of the final FY 2004 rule would be billed for the annual fee during the anniversary month of the license at the FY 2003 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2004 rule would be billed for the annual fee at the FY 2004 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 rule to all licensees, although, 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 2004 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 Team, Division of Financial Management, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. The NRC plans to publish the final fee rule in May 2004. 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 establish the hourly rates used to calculate fees and to adjust the part 170 fees based on the proposed hourly rates.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to establish in §170.20 the two professional hourly rates for NRC staff time. These proposed rates would be based on the number of FY 2004 direct program full time equivalents (FTEs) and the FY 2004 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The proposed rate for the reactor program is $157 per hour ($278,965 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is $156 per hour ($277,422 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 2003 final fee rule, the reactor and materials program rates were $156 and $158, respectively.

The primary ~~A major~~ reason for the increase to the reactor rate is the salary and benefits increase that results primarily from the Government-wide pay raise. The primary reason for the decrease in the materials hourly rate is the reduction of resources for the program, which includes a decrease of 11 FTE for FY 2004 .

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

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II. - FY 2004 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

| | Reactor Program | Materials Program |
|---|---|---|
| Direct Program Salaries & Benefits | $145.6M | $34.0M |
| Overhead Salaries & Benefits, Program Travel and Other Support | 69.9M | 16.2M |
| Allocated Agency Management and Support | 120.3M | 28.1M |

| | | |
|---|---|---|
| Subtotal | $335.8M | $78.3M |
| Less offsetting receipts | -0.1M | -0.00M |
| Total Budget Included in Hourly Rate | $335.7M | $78.3M |
| | | |
| Program Direct FTEs | 1203.4 | 282.3 |
| Rate per Direct FTE | $278,965 | $277,422 |
| Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours) | $157 | $156 |

As shown in Table II, dividing the $335.7 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1203.4) results in a rate for the reactor program of $278,965 per FTE for FY 2004. The Direct FTE Hourly Rate for the reactor program would be $157 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($278,965) 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 $78.3 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (282.3) results in a rate of $277,422 per FTE for FY 2004. The Direct FTE Hourly Rate for the materials program would be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($277,422) 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 2004 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 2003. 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, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing "flat" fees are applicable for fee categories K.1 through K.5 of §170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

The NRC is also proposing to expand category 10 of §170.31 to include category 10.C for evaluation of security plans, route approvals and surveys, and transportation security devices, including immobilization devices. This change ~~is being~~ would be made to clarify the transportation security activities for this category. changed language

3. Administrative Amendment

The NRC is proposing to modify category 13 of §170.31; to include licensing and inspection fees under category 13.A and delete category 13.C. This change ~~is being~~ would be made so that §170.31 corresponds with the categorization used in §171.16(d).

4. Limited English Proficiency Requirements

*OGC - need your assistance with the langauge*

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

1. Establish the materials and reactor programs FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates;

3. Revise §170.31 to add category 10.C to clarify transportation security activities;

4. Make an administrative change to fee category 13 of §170.31 to be consistent with category 13 of §171.16(d).

5. ***Clarify the Limited English Proficiency requirements..... (complete after OGC provides language above)***

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 2004 as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2004. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2003. Based on the substantial change in the total budget from FY 2003 to FY 2004 and the magnitude of the budget allocated to certain classes or licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees compared to FY 2003 for three classes of licenses (power reactors, rare earth mills, and transportation), and decreased annual fees for three classes (spent fuel storage/reactor decommissioning, non-power reactors, and fuel facilities). For the uranium recovery and small materials classes, most of the categories of licenses would have decreased annual fees and others would have increased annual fees.

The annual fees in §§171.15 and 171.16 would be revised for FY 2004 to recover approximately 92 percent of the NRC's FY 2004 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2004 is $402.3 million, compared to $399.7 million for FY 2003.

Within the fee classes, the FY 2004 annual fees will decrease for most categories of licenses and increase for other categories from the previous year. All categories within the materials users class would have annual fee decreases with the exception of the master materials license category which would have an increase of approximately 22 percent. The proposed increases in annual fees range from approximately 8.1 percent for operating power reactors to approximately 125 percent for the uranium recovery disposal incidental to operations category. The proposed decreases in annual fees range from approximately .6 percent for non-power reactors to approximately 75 percent for conventional mills.

Factors affecting the changes to the annual fee amounts include adjustments in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 94 percent for FY 2003 to 92 percent for FY 2004, the estimated part 170 collections for the various classes of licenses, the decreased hourly rate for the materials and waste program, the increased hourly rate for the reactor program, decreases in the numbers of licensees for certain categories of licenses, and a $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 final rule was published (there was no carryover from FY 2002 to reduce the FY 2003 fees).

Table III below shows the proposed rebaselined annual fees for FY 2004 for representative categories of licenses.

TABLE III. - REBASELINED ANNUAL FEES FOR FY 2004

| Class/category of licenses | FY 2004 Annual fee |
|---|---|
| Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee) | $3,378,000 |
| Spent Fuel Storage/Reactor Decommissioning | 208,000 |
| Nonpower Reactors | 62,900 |
| High Enriched Uranium Fuel Facility | 5,392,000 |
| Low Enriched Uranium Fuel Facility | 1,808,000 |
| $UF_6$ Conversion Facility | 775,000 |
| Uranium Mills | 15,700 |
| Transportation: | |
| Users/Fabricators | 92,100 |
| Users Only | 7,500 |
| Typical Materials Users: | |
| Radiographers | 10,400 |
| Well Loggers | 4,000 |
| Gauge Users | 1,600 |
| Broad Scope Medical | 22,100 |

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 2004 will be reduced by about $47.4 million. The total FY 2004 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table IV. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE IV. - SURCHARGE COSTS

[Dollars in millions]

| Category of costs | FY 2004 budgeted costs |
|---|---|
| 1. Activities not attributable to an existing NRC licensee or class of licensee: | |
| a. International activities | $10.7 |
| b. Agreement State oversight | 10.4 |
| c. Low-level waste disposal generic activities | 3.7 |
| d. Site decommissioning management plan activities not recovered under part 170 | 3.3 |
| 2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy: | |

a. Fee exemption for nonprofit educational institutions ..... 7.2

b. Licensing and inspection activities associated with other Federal agencies ..... 2.5

c. Costs not recovered from small entities under 10 CFR 171.16(c) ..... 4.0

3. Activities supporting NRC operating licensees and others:

a. Regulatory support to Agreement States ..... 22.7

b. Generic decommissioning/reclamation (except those related to power reactors) ..... 6.2

Total surcharge costs ..... 70.6

Less 8 percent of NRC's FY 2004 total budget (less NWF) ..... -47.4

Total Surcharge Costs to be Recovered ..... $23.2

As shown in Table IV, $23.2 million would be the total surcharge cost allocated to the various classes of licenses for FY 2004. 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 proposed FY 2004 surcharge costs allocated to each class of licenses 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. - ALLOCATION OF SURCHARGE

| | LLW surcharge | | Non-LLW surcharge | | Total surcharge |
|---|---|---|---|---|---|
| | Percent | $,M | Percent | $,M | $,M |
| Operating Power Reactors | 74 | 2.8 | 83.1 | 16.2 | 18.9 |
| Spent Fuel Storage/ Reactor Decomm. | --- | --- | 5.5 | 1.1 | 1.1 |
| Nonpower Reactors | --- | --- | 0.1 | 0.0 | 0.0 |
| Fuel Facilities | 8 | 0.3 | 6.8 | 1.3 | 1.6 |
| Materials Users | 18 | 0.7 | 2.8 | 0.5 | 1.2 |
| Transportation | --- | --- | 1.3 | 0.2 | 0.2 |
| Rare Earth Facilities | --- | --- | 0.1 | 0.0 | 0.0 |
| Uranium Recovery | --- | --- | 0.4 | 0.1 | 0.1 |
| TOTAL SURCHARGE | 100 | 3.7 | 100.0 | 19.4 | 23.2 |

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's 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.

a. Fuel Facilities

The FY 2004 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately $24.9 million compared to $27.0 million in FY 2003. The annual fee decrease is attributable to the increase in part 170 fees for the fuel facility class due to an increase in the Mixed-Oxide Fuel effort. The annual fees are allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (e.g., decommissioning or license termination) that results in them not being subject to part 171 costs applicable to the fee class,

then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders, resulting in higher fees for those affected licensees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully ~~utilize~~ use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor) level of effort.

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

TABLE VI. - EFFORT FACTORS FOR FUEL FACILITIES

| Facility type | Number of facilities | Effort factors | |
|---|---|---|---|
| | | Safety | Safeguards |
| High Enriched Uranium Fuel | 2 | 91 (36.0%) | 76 (57.1%) |

| | | | |
|---|---|---|---|
| Enrichment | 2 | 70 (27.7%) | 34 (25.6%) |
| Low Enriched Uranium Fuel | 3 | 66 (26.1%) | 18 (13.5%) |
| UF6 Conversion | 1 | 12 (4.7%) | 0 (0%) |
| Limited Operations Facility | 1 | 8 (3.2%) | 3 (2.3%) |
| Others | 1 | 6 (2.4%) | 2 (1.5%) |

Applying these factors to the safety, safeguards, and surcharge components of the $24.9 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the subcategories of this class summarized in Table VII.

TABLE VII. - ANNUAL FEES FOR FUEL FACILITIES

| Facility type | FY 2004 annual fee |
|---|---|
| High Enriched Uranium Fuel | $5,392,000 |
| Uranium Enrichment | 3,358,000 |
| Low Enriched Uranium | 1,808,000 |
| $UF_6$ Conversion | 775,000 |
| Limited Operations Facility | 710,000 |
| Others | 517,000 |

b. Uranium Recovery Facilities

The proposed FY 2004 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $.56 million. Approximately $.46 million of this amount would be assessed to DOE. The remaining $0.1 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), 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 are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

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

percent

| | |
|---|---|
| UMTRCA Title I budgeted costs | $ 360,648 |
| 50% of generic/other uranium recovery budgeted costs | 58,291 |
| 50% of uranium recovery surcharge | 42,969 |
| Total Annual Fee Amount for DOE | 461,908 |

Annual Fee Amount for UMTRCA Title II Specific Licenses:

percent

50% of generic/other uranium recovery budgeted costs ..... 58,291

50% of uranium recovery surcharge ..... 42,969

Total Annual Fee Amount for Title II Specific Licenses ..... 101,260

The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to reflect NRC's increased efforts related to closure compared to operations and revises the weighting factors to reflect the effort levels per category. However, 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 VIII. - WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

| | | | Level of benefit total weight | |
|---|---|---|---|---|
| Facility type | Number of facilities | Category weight | Value | Percent |
| Class I (conventional mills) | 2 | 900 | 1,800 | 31% |
| Class II (solution mining) | 3 | 800 | 2,400 | 41 |
| 11e.(2) disposal | 1 | 795 | 795 | 14 |
| 11e.(2) disposal incident to existing tailings sites | 1 | 800 | 800 | 14 |

Applying these factors to the $0.1 million in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees:

TABLE IX. - ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

| Facility type | FY 2003 annual fee |
|---|---|
| Class I (conventional mills) | $ 15,700 |
| Class II (solution mining) | 14,000 |
| 11e.(2) disposal | 13,900 |
| 11e.(2) disposal incidental to existing tailings sites | 14,000 |

In the FY 2001 final rule (66 FR 32478; June 14, 2001), 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 2004 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2004 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in §171.19(c).

c. Power Reactors

The approximately $329.7 million in budgeted costs to be recovered through FY 2004 annual fees assessed to the power reactor class, which includes NRC's budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2004 annual fee of $3,170,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2004 spent fuel storage/reactor decommissioning annual fee of $208,000. This results in a total FY 2004 annual fee of $3,378,000 for each power reactor licensed to operate.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2004, budgeted costs of approximately $25.2 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 are divided equally among the 121 licensees, resulting in a FY 2004 annual fee of $208,000 per licensee.

e. Non-power Reactors

Approximately $252,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2004. This amount is divided equally among the four non-power reactors subject to annual fees. This results in a FY 2004 annual fee of $62,900 for each licensee.

f. Rare Earth Facilities

The FY 2004 budgeted costs of $191,900 for rare earth facilities to be recovered through annual fees will be assessed to the one licensee who has a specific license for receipt and processing of source material. ~~Prior to~~ Before the beginning of FY 2004, one rare earth facility requested that its license be amended to authorize decommissioning activities only. Consequently, this license is no longer subject to annual fees. The result is a FY 2004 annual fee of $191,900 for the one remaining licensee.

g. Materials Users

To equitably and fairly allocate the $18.7 million in FY 2004 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 $13.3 million in general costs and is .94 for FY 2004. The inspection multiplier is the multiple necessary to recover approximately $4.2 million in inspection costs for FY 2003, and is 0.99 for FY 2004. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2004, approximately $83,200 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the $540,300 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $670,000 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in §171.16(d).

h. Transportation

Of the approximately $5.5 million in FY 2004 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.5 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $4.0 million, approximately 21 percent is allocated to the 75 quality assurance plans authorizing use only and the 37 quality assurance plans authorizing use and design/fabrication. The remaining 79 percent is allocated only to the 37 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of $7,500 for each of the holders of quality assurance plans that authorize use only, and an annual fee of $92,100 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Agreement State Activities

On July 23, 2003, the NRC approved an Agreement with the State of Wisconsin under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended. This Agreement transferred to the State the Commission's regulatory authority over byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass. This Agreement became effective August 10, 2003. Including Wisconsin, there are now 33 States that are Agreement States.

As a result of this Agreement, 222 former NRC licensees are now Wisconsin licensees. Thirty additional licenses were partially transferred to Wisconsin because the NRC retained jurisdiction over certain activities of those licensees. Because NRC does not charge fees to Agreement States or their licensees, the NRC will not collect fees in FY 2004 or thereafter for the 222 former NRC licensees, and will collect fees from the 30 partially transferred licensees only for those activities over which the NRC retains jurisdiction. The costs of Agreement State regulatory support and oversight activities for Wisconsin, as for any other Agreement State, would be recovered through the surcharge, consistent with existing fee policy.

On January 2, 2003, the State of Utah requested an amended Agreement between the NRC and itself per Section 274b of the AEA. This amendment would transfer regulatory responsibility for uranium mills and tailings to the State. Utah had previously become an Agreement State for certain other categories of materials, effective April 1, 1984. The request for this amendment is currently under review by the Commission, and the Commission expects to reach a decision on this matter by the end of March 2004. If the Commission approves this Agreement, four licensees would be transferred from NRC to Utah. Two of these licensees are

uranium mills that are in reclamation, and therefore do not currently pay part 171 annual fees. However, the other two licensees do currently pay NRC annual fees; if these licensees are removed from the uranium recovery class of licensees, the annual fees for the remaining NRC licensees in that class would likely increase in the final FY 2004 fee rule.

3. Master Materials Licenses

On March 17, 2003, the NRC issued a master material license to the U.S. Department of Veterans Affairs (VA) to take over principal regulatory functions for its medical facilities throughout the United States. Including the VA, there are now three master materials licenses.

The VA will conduct its own inspections to ensure compliance with NRC regulations and with the terms of the VA-issued permits. It will also take enforcement action if violations of requirements are identified. The NRC will retain the authority to take enforcement action, if appropriate. The NRC will continue to conduct evaluations of the VA's performance and conduct independent inspections of a sample of VA medical facilities.

As a result of the issuance of the master materials license to the VA, 116 medical facilities that were previously licensed by the NRC for various uses of radioactive materials for the diagnosis and treatment of diseases are now included in the master materials license. The number of licensees for certain categories would decrease and the category for master materials licenses would increase from two to three.

Insert on page 31

## III. Plain Language

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

4. Administrative Amendment

The NRC is proposing to modify Category 10 of §171.16(d) to add category 10.C for the evaluation of security plans, route approvals, route surveys, and transportation security devices, including immobilization devices. This is an administrative change that would be made only to ensure consistency with fee category 10.C of §170.31 as described above. The NRC is not proposing an annual fee for category 10.C.

In summary, the NRC is proposing to --

1. Established rebaselined annual fees for FY 2004;

2. Adjust the annual fees to reflect the changes in agreement state activities and the master materials license;

3. Make an administrative change to add fee category 10.C to §171.16(d) to be consistent with the proposed addition of category 10.C to §170.31.

Add insert

III. Plain Language

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~~ these standard~~s~~ is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC ~~is~~ would amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to

recover approximately 92 percent of its budget authority in FY 2004 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 2004 is 92 percent. To comply with this statutory requirement and in accordance with §171.13, the NRC is publishing the amount of the FY 2004 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 92 percent of the Commission's FY 2004 budget of $626.1 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 92 percent of its FY 2004 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.

would

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2004. The proposed rule will 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. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CR 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 2004.

## 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 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.

## X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

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 adopting the following amendments to 10 CFR Parts 170 and 171.

proposing to

PART 170 -- FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§170.21 Activities); $157 per hour

(b) Nuclear Materials and Nuclear Waste Program (§170.31 Activities); $156 per hour

3. In §170.21, Category K in the table is revised to read as follows:

§170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

| Facility categories and type of fees | Fees[1,2] |
|---|---|

* * * * *

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.

1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.

Application-new license ..... $10,200.

Amendment ..... $10,200.

2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8). This category includes application for the export of radioactive waste.

Application-new license ..... $5,900.

Amendment ..... $5,900.

3. Application for export of components requiring foreign government assurances only.

Application-new license ..... $1,900.

Amendment ..... $1,900.

4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.

Application-new license ..... $1,200.

Amendment ..... $1,200.

5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.

Amendment ..... $230.

[1] Fees will not be charged for orders issued by the Commission under §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will

not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

* * * * *

4. Section 170.31 is revised to read as follows:

§170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

| Category of materials licenses and type of fees[1] | Fee[2, 3] |
|---|---|

1. Special nuclear material:

A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:

Licensing and Inspection ..... Full Cost.

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

Licensing and inspection ..... Full Cost.

C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]

Application ..... $720.

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]

Application ..... $1,500.

E. Licenses or certificates for construction and operation of a uranium

enrichment facility:

Licensing and inspection ..... Full Cost.

2. Source material:

A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

Licensing and inspection ..... Full Cost.

(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):

Licensing and inspection ..... Full Cost.

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):

Licensing and inspection . . . . . Full Cost.

B. Licenses which authorize the possession, use, and/or installation of source material for shielding:

Application . . . . . $170.

C. All other source material licenses:

Application . . . . . $6,100.

3. Byproduct material:

A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application . . . . . $7,300.

B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application . . . . . $2,800.

C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators,

reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §170.11(a)(4). These licenses are covered by fee Category 3D.

Application ..... $6,000.

D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under §170.11(a)(4).

Application ..... $2,700.

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application ..... $1,800.

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application ..... $3,700.

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application ..... $8,700.

H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:

Application ..... $4,200.

I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:

Application ..... $4,300.

J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:

Application ..... $1,100.

K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:

Application ..... $640.

L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:

Application ..... $6,100.

M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:

Application ..... $3,000.

N. Licenses that authorize services for other licensees, except:

(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application ..... $3,300.

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

Application ..... $3,200.

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

Application ..... $1,200.

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

Registration ..... $610.

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other

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

Licensing and inspection ..... Full Cost.

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application ..... $1,900.

C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application ..... $2,800.

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application ..... $2,000.

B. Licenses for possession and use of byproduct material for field flooding tracer studies:

Licensing ..... Full Cost.

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application ..... $12,400.

7. Medical licenses:

A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application ..... $6,800.

B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application ..... $4,900.

C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application ..... $1,900.

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application ..... $360.

9. Device, product, or sealed source safety evaluation:

A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

Application - each device ..... $5,600.

B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:

Application - each device ..... $5,600.

C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application - each source ..... $1,800.

D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:

Application - each source ..... $590.

10. Transportation of radioactive material:

A. Evaluation of casks, packages, and shipping containers:

Licensing and inspection ..... Full Cost.

B. Evaluation of 10 CFR Part 71 quality assurance programs:

Application ..... $2,100.
Inspections ..... Full Cost.

C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices):

Licensing and inspection ..... Full Cost.

11. Review of standardized spent fuel facilities:

Licensing and inspection ..... Full Cost.

12. Special projects:

Approvals and preapplication/Licensing activities ..... Full Cost.
Inspections ..... Full Cost.

13. A. Spent fuel storage cask Certificate of Compliance:

Licensing ..... Full Cost.
Inspections ..... Full Cost.

B. Inspections related to storage of spent fuel under 72.210 of this chapter ..... Full Cost.

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

Licensing and inspection ..... Full Cost.

15. Import and Export licenses:

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

A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions

under 10 CFR 110.40(b). This category includes application for import of radioactive waste.

Application - new license ..... $10,200.
Amendment ..... $10,200.

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

Application - new license ..... $5,900.
Amendment ..... $5,900.

C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

Application - new license ..... $1,900.
Amendment ..... $1,900.

D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

Application - new license ..... $1,200.

Amendment ..... $1,200.

E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.

Amendment ..... $230.

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.

Application ..... $1,500.

---

[1] Types of fees - Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) Application and registration fees. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with §170.12(b).

(c) Amendment fees. Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with §170.12(c).

(e) Generally licensed device registrations under 10 CFR 31.5. Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in §170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

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

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

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

Authority: sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

6. In §171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2004 annual fee for each operating power reactor which must be collected by September 30, 2004, is $3,378,000.

(2) The FY 2004 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2004 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2004 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2004 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2004 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $208,000.

(2) The FY 2004 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2004 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2004 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2004 surcharge are as follows:

(i) Low level waste disposal generic activities;

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

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

(2) The total FY 2004 surcharge allocated to the operating power reactor class of licenses is $18.9 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2004 operating power reactor surcharge to be assessed to each operating power reactor is approximately $181,200. This amount is calculated by dividing the total operating power reactor surcharge ($18.9 million) by the number of operating power reactors (104).

(3) The FY 2004 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $1.1 million. The FY 2004 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $8,800. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2004 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor ..... $62,900.
Test reactor ..... $62,900.

7. In §171.16, paragraphs (c), (d), and (e) are revised to read as follows:

<u>§171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC</u>.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

| | Maximum annual fee per licensed category |
|---|---|
| Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts) | |
| $350,000 to $5 million | $2,300. |
| Less than $350,000 | 500. |
| Manufacturing entities that have an average of 500 employees or less | |
| 35 to 500 employees | 2,300. |
| Less than 35 employees | 500. |
| Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population) | |

20,000 to 50,000 ..... 2,300.

Less than 20,000 ..... 500.

Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less

35 to 500 employees ..... $2,300.

Less than 35 employees ..... $500.

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's website at http://www.nrc.gov. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2004 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2004 surcharge are shown for convenience in paragraph (e) of this section. The FY 2004 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC
(See footnotes at end of table)

| Category of materials licenses | Annual fees[1, 2, 3] |
|---|---|
| 1. Special nuclear material: | |
| A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities. | |
| (a) Strategic Special Nuclear Material: | |
| BWX Technologies | |
| SNM-42 | $5,392,000. |
| Nuclear Fuel Services | |
| SNM-124 | 5,392,000. |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor | |

Fuel:

Global Nuclear Fuel

SNM-1097 ..... 1,808,000.

Framatome ANP Richland

SNM-1227 ..... 1,808,000.

Westinghouse Electric Company

SNM-1107 ..... 1,808,000.

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

(a) Facilities with limited operations:

Framatome ANP SNM-1168 ..... 710,000.

(b) All Others:

General Electric SNM-960 ..... 517,000.

B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) ..... N/A[11]

C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in

industrial measuring systems, including x-ray fluorescence analyzers ..... 1,600.

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) ..... 4,300.

E. Licenses or certificates for the operation of a uranium enrichment facility ..... 3,358,000.

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride ..... 775,000.

(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing

the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.

Class I facilities[4] ..... 15,700.

Class II facilities[4] ..... 14,000.

Other facilities[4] ..... 191,900.

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4) ..... 13,900.

(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in

Category 2A(2) . . . . . 14,000.

B. Licenses that authorize only the possession, use and/or installation of source material for shielding . . . . . 610.

C. All other source material licenses . . . . . 9,800.

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution . . . . . 19,200.

B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution . . . . . 5,900.

C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources

and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §171.11(a)(1). These licenses are covered by fee under Category 3D ..... 9,400.

D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under §171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same

license ..... 3,900.

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) ..... 2,900.

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes ..... 5,500.

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes ..... 20,400.

H. Licenses issued under Subpart A

of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter ..... 4,800.

I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter ..... 5,000.

J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed

under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter . . . . . 1,900.

K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter . . . . . 1,100.

L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution . . . . . 10,200.

M. Other licenses for possession and use of byproduct material issued under

part 30 of this chapter for research and development that do not authorize commercial distribution . . . . . 5,100.

N. Licenses that authorize services for other licensees, except:

(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and

(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C . . . . . 5,500.

O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license . . . . . 10,400.

P. All other specific byproduct material licenses, except those in Categories 4A through 9D . . . . . 2,100.

Q. Registration of devices generally licensed pursuant to part 31 of this chapter ..... N/A[13]

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material ..... N/A[5]

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose

of the material ..... 9,400.

C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material ..... 6,700.

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies ..... 4,000.

B. Licenses for possession and use of byproduct material for field flooding tracer studies ..... N/A[5]

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material ..... 19,400.

7. Medical licenses:

A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license ..... 8,900.

B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] ..... 22,100.

C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material,

source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] ..... 3,900.

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities ..... 1,200.

9. Device, product, or sealed source safety evaluation:

A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution ..... 5,500.

B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source

material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices ..... 5,500.

C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution ..... 1,800.

D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel ..... 580.

10. Transportation of radioactive material:

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

Spent Fuel, High-Level Waste, and plutonium air packages ..... N/A[6]

Other Casks ..... N/A[6]

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

Users and Fabricators ..... 92,100.

Users ..... 7,500.

C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices) ..... N/A[6]

11. Standardized spent fuel facilities ..... N/A[6]

12. Special Projects ..... N/A[6]

13. A. Spent fuel storage cask Certificate of Compliance ..... N/A[6]

B. General licenses for storage of spent fuel under 10 CFR 72.210 ..... N/A[12]

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter ..... N/A[7]

15. Import and Export licenses . . . . . N/A[8]

16. Reciprocity . . . . . N/A[8]

17. Master materials licenses of broad scope issued to Government agencies . . . . . 279,000.

18. Department of Energy:

A. Certificates of Compliance . . . . . 1,538,000[10]

B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities . . . . . 462,000.

---

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses ~~prior to~~ before October 1, 2003, and permanently ceased licensed activities entirely by September 30, 2003. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

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

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

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

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

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

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

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

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

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

[11] See §171.15(c).

[12] See §171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR Part 170 fees.

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

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; (e.g., international cooperative safety program and international safeguards activities;

support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

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

Dated at Rockville, Maryland, this _____ day of _____, 2004.

For the Nuclear Regulatory Commission.

_____
Jesse L. Funches,
Chief Financial Officer.

support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

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

Dated at Rockville, Maryland, this _____ day of _____, 2004.

For the Nuclear Regulatory Commission.

_____
Jesse L. Funches,
Chief Financial Officer.

Distribution:

| | |
|---|---|
| OCFO R/F | OCFO/DFM RF (LF-1.31) |
| OCFO S/F | OCFO/DAF R/F (DFM-3-192) |
| EDO R/F | S Hudson (OCFO-2003-470) |
| OIG | T. Croote, LFT |
| OCFO/DAF SF | S. Crutchfield, LFT |

ADAMS - **YES**/NO SENSITIVE/**NON-SENSITIVE** **PUBLIC**/NON-PUBLIC INITIALS_____

DOCUMENT NAME: P:\2004 proposed fee rule.wpd

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

| OFFICE | OCFO/DFM/LFT | | ADM | | OCIO | | OGC | | OIP | |
|---|---|---|---|---|---|---|---|---|---|---|
| NAME | ANorris/TCroote | | MLesar | | BShelton | | TRothschild | | JDLee | |
| DATE | / /04 | | / /04 | | / /04 | | / /04 | | / /04 | |

| OFFICE | OCFO/DFM/LFT | | OCFO/DFM | | OCFO/DFM | | EDO | | DCFO | | CFO | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| NAME | RCarlson | | TRossi | | CDolinka | | WTravers | | PRabideau | | JLFunches | |
| DATE | / /04 | | / /04 | | / /04 | | / /04 | | / /04 | | / /04 | |

OFFICIAL RECORD COPY

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A TO THIS PROPOSED RULE --

DRAFT REGULATORY FLEXIBILITY ANALYSIS FOR THE

AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND

10 CFR PART 171 (ANNUAL FEES)

I. Background.

The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 et seq.) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established ~~on the basis of~~ based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in §171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA-90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less

appropriations from the Nuclear Waste Fund, by assessing license and annual fees. 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 amount to be recovered for FY 2004 is approximately $545.6 million.

OBRA-90 requires that the schedule of charges established by rule making should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, ~~in order~~ to stabilize fees, 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.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would

continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

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 its part 171 annual fees again in FY 2004. Rebaselining fees will result in decreased annual fees for a majority of the categories of licenses (including many materials licensees) and increased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2004 fee rule as required by law.

II. Impact on small entities.

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity

certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 27 percent of these licensees (approximately 1,300 licensees for FY 2003) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in

about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

## III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah) were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The

structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that a change was not warranted to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC re-examined the small entity fees for FY 2003, and did not believe that a change to the small entity fees was waranted. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, 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.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2004. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary.

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 92 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. ~~On the basis of~~ Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less

than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2004.

U. S. Nuclear Regulatory Commission

Small Entity Compliance Guide

Fiscal Year 2004

Contents

Introduction

NRC Definition of Small Entity

NRC Small Entity Fees

Instructions for Completing NRC Form 526

## Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees in complying with the FY 2004 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2004 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's website at http://www.nrc.gov. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice.

Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*--a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*--a manufacturing concern with an average of 500 or fewer employees during each pay period for the preceding 12 calendar months;

(3) *Small organizations*--a not-for-profit organization that is independently owned and operated and has annual gross receipts of $5 million or less;

(4) *Small governmental jurisdiction*--a government of a city, county, town, township, village, school district or special district, with a population of less than 50,000;

(5) *Small educational institution*--an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

To further assist licensees in determining if they qualify as a small entity, ~~we are~~ ~~providing~~ the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR Part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of fees for licensees that qualify as small entity under the NRC's size standards. The fees are as follows:

| | Maximum annual fee per licensed category |
|---|---|
| Small business not engaged | |

in manufacturing and small

not-for profit organizations

(Gross Annual Receipts)

$350,000 to $5 million ..... $2,300.

Less than $350,000 ..... 500.

Manufacturing entities that

have an average of 500

employees or less

35 to 500 employees ..... 2,300.

Less than 35 employees ..... 500.

Small Governmental Jurisdictions

(Including publicly supported

educational institutions)

(population)

20,000 to 50,000 ..... 2,300.

Less than 20,000 ..... 500.

Educational institutions that

are not State or publicly

supported, and have 500 Employees

or less

35 to 500 employees ..... 2,300.

Less than 35 employees ..... 500.

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's website at http://www.nrc.gov. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7544, or by e-mailing us at fees@nrc.gov.

Instructions for Completing NRC Small Entity Form 526

(1) File a separate NRC Form 526 for each annual fee invoice received.

(2) Complete all items on NRC Form 526, as follows:

a. Enter the license number and invoice number exactly as they appear on the annual fee invoice.

b. Enter the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) if known.

c. Enter the licensee's name and address as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does

not constitute a request to amend the license. Any request to amend a license must be submitted to the respective licensing staff in the NRC's regional or headquarters offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(i) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(ii) The size standards apply to the licensee, including all parent companies and affiliates-- not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(iii) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources --not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority (if included in gross or total income), proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(iv) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which

is either $2,300 or $500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a "possession only" license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration." This means that the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed (instead of the full small entity annual fee of $2,300 or $500).

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return form 526 ~~in order~~ for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301-415-7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

-0001

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found at 10 CFR Part 13.