

*Comments to
intermediate*

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH61

Revision of Fee Schedules; Fee Recovery for FY 2005

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 90 percent of its budget authority in fiscal year (FY) 2005, less the amounts appropriated from the Nuclear Waste Fund (NWF).

The amount to be recovered for FY 2005 is approximately \$540.7 million.

Where does this # come from? Why doesn't it match the amt (\$534,354,000) in the Consolidated Appropriations Act, see pg 496.

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

If you have any questions concerning my comments, please contact me at 415-1569. Heidi Kandler

VIII. Regulatory Flexibility Analysis

IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency 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 90 percent of its FY 2005 budget authority, less the amounts appropriated from the NWF, through fees. In the Consolidated Appropriations Act of 2005 (Pub. L. 108-447), as adjusted by the rescission discussed in Section 122(a), Congress appropriated \$669.3 million to the NRC for FY 2005. This sum includes \$68.5 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2005 is approximately \$540.7 million.

While the total amount that the NRC must recover in fees in FY 2005 has been determined by Congress, and therefore is outside the scope of this rulemaking, the NRC notes that it has supported previous legislative efforts to remove additional costs from the fee base and continues to do so. In particular, the NRC has supported the removal of generic homeland security costs from the fee base. In the 2003 Congressional session, an Energy Policy Bill

(H.R.6) was introduced that would have amended OBRA-90 to remove many homeland security costs from the fee base (except homeland security costs associated with fingerprinting, background checks, and security inspections). In its August 29, 2003, letter to the House Committee on Energy and Commerce, the Commission supported the fee recovery provisions of this bill. The House approved the Energy Policy Bill produced by the conference committee and the Senate began debate on the conference committee report. However, as of the date of this notice, no further action has been taken by the Senate or House on this bill. A successor to H.R.6, S.2095, was subsequently introduced in Congress, which also would remove many homeland security costs from the fee base. The NRC continues to support legislative efforts to remove homeland security costs from the fee base.

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 90 percent of its FY 2005 budget authority less the appropriations received from

the NWF. The NRC's total budget authority for FY 2005 is \$669.3 million, of which approximately \$68.5 million has been appropriated from the NWF. Based on the 90 percent fee recovery requirement, the NRC must recover approximately \$540.7 million in FY 2005 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 2005 is \$4.6 million less than the amount estimated for recovery in FY 2004.

The FY 2005 fee recovery amount is reduced by a \$2.2 million carryover from additional collections in FY 2004 that were unanticipated at the time the final FY 2004 fee rule was published. This leaves approximately \$538.5 million to be recovered in FY 2005 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$163.1 million will be recovered in FY 2005 from part 170 fees and other offsetting receipts. For FY 2005, the NRC also estimates a net adjustment of approximately \$0.5 million for FY 2005 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2005 for FY 2004 invoices. The remaining \$374.9 million would be recovered through the part 171 annual fees, compared to \$389.9 million for FY 2004.

The primary reason for the decrease in total fees for FY 2005 is that the NRC's fee recovery is 90 percent in FY 2005, compared to 92 percent in FY 2004, in accordance with the FY 2001 Energy and Water Development Appropriations Act. This decrease in the NRC's required fee recovery is sufficient to offset the increase of 1.5 percent in the NRC's non-NWF budget in FY 2005.

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 and the results of the agency's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, November 15, 1990, 104 Stat. 2838). Additionally, the NRC is proposing to revise part 170 to provide for the assessment of full cost fees for licensee-specific activities resulting from most orders and decommissioning activities associated with unlicensed sites; clarify that part 170 fee waivers need to be requested ^{from} to, and granted ^{by} from, the CFO in writing in certain instances; notify licensees that the NRC intends to apply its existing full cost recovery policy for project managers to license renewal project managers; and make minor administrative changes to enhance consistency between the fee categories used in part 170 and part 171.

The NRC is proposing the following changes:

1. Hourly Rates

The NRC is proposing to establish in §170.20 two professional hourly rates for NRC staff time. These proposed rates would be based on the number of FY 2005 direct program full time equivalents (FTEs) and the FY 2005 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 \$205 per hour (\$296,877 per direct FTE). This rate

→ another option is "addressed to"

Previously, the NRC used an estimate of 1,776 hours per FTE to calculate the reactor and materials program hourly rates, based on guidance provided by the Office of Management and Budget (OMB) in Circular A-76, "Performance of Commercial Activities." However, this Circular regards assumptions to be used to estimate personnel costs for the competition of commercial activities, and does not provide guidance about assumptions to be used for purposes of fee calculation. (OMB's Circular A-25, "User Charges," also does not specifically address the number of hours to assume per FTE in calculating fees, but does emphasize that agency fees should reflect the full cost of providing services to identifiable beneficiaries.) The 1,776 figure from Circular A-27 includes time for administrative, training, and other activities that a direct program FTE may perform that, while relevant to consider for certain costing purposes, would more accurately be considered overhead, and therefore, should not be assumed to be 'direct' time for purposes of calculating a rate per hour of direct activities, which is the purpose of the NRC's hourly rates. While the 1,776 figure would be a useful fee calculation input were more detailed information not available, the NRC has been collecting more detailed information from its time and labor system, which is now an established source of data on the NRC's employees' work activities. The NRC has performed a review of its time and labor data, which indicates that 1,446 hours per FTE more accurately reflects the time expended by NRC program employees performing activities directly associated with the programmatic mission of the NRC. The use of 1,446 hours per FTE is the primary reason for the higher proposed FY 2005 hourly rates. The Government-wide pay raise is another reason for the proposed increase in the hourly rates.

The NRC recognizes that the proposed increase to the hourly rates is more significant than those hourly rate changes that have occurred in previous years. However, the NRC believes that this increase is justified in light of the review of the NRC's time and labor data, ^{which} ~~that~~

showed that NRC direct employees spend, on average, 1,446 hours per year on activities directly associated with the programmatic mission of the NRC, as discussed above. The NRC believes that the use of 1,446 hours per FTE is more appropriate for the purpose of the NRC's fee calculation than other ^{estimates of} assumptions about hours per FTE that may be used for ^{different} other agency financial purposes. ~~and that it results in hourly rates that more accurately reflect the full cost of~~ ^{Additionally, the NRC maintains that the use of 1446 hrs/FTE} providing services under part 170. The NRC believes this change is consistent with guidance provided in OMB Circular A-25 on recovering the full cost of services provided to identifiable recipients, and also supports industry comments that consistently recommend that the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees.

What change? The amt of hrs or the hourly rate?

Higher hourly rates would result in (1) increased full cost fees for licensing and inspection activities, and (2) increased materials flat fees for license applications. As noted above, total part 171 annual fees would decrease by the same amount as the increase in total part 170 fees. This shift from part 171 to part 170 would ^{be greater} occur ~~more~~ so for those fee classes with a higher proportion of part 170 work to part 171 work activities (e.g., reactors, uranium recovery, rare earth). Higher hourly rates would also result in some licensees ^{such as} paying less total (part 170 plus part 171) fees than if this change were not enacted, ^{namely} [those licensees for which the NRC performs fewer hours of part 170 services than the average licensee in that class]. Similarly, licensees for which the NRC performs more hours of part 170 services than ~~the average licensee in that class~~ would pay more in total fees under the proposed higher hourly rates.

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). All program costs, except contract

> licensees, such as those licensees for which the NRC... that class, paying less total... were not enacted.

support, are included in the hourly rate for each program by allocating them uniformly by the total number of direct FTEs for the program. 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 recovered through part 170 fees.

b. All non-program direct costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's 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 2005 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

| | Reactor <u>program</u> | Materials <u>program</u> |
|---|---------------------------|-----------------------------|
| Direct Program Salaries & Benefits | \$150.5M | \$39.2M |
| Overhead Salaries & Benefits, | | |
| Program Travel and Other Support | 77.5M | 18.0M |
| Allocated Agency Management and Support | <u>126.1M</u> | <u>31.6M</u> |
| Subtotal | 354.1M | 88.8M |
| Less Offsetting Receipts | <u>-0.1M</u> | <u>-0.00M</u> |
| Total Budget Included in Hourly Rate | \$354.0M | \$88.8M |
| | | |
| Program Direct FTEs | 1,192.5 | 310.4 |

of part 170 to cover an owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

5. Fee Waivers

Under §170.11(a)(1)(iii), part 170 fees are not required for a report/request that has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations. The NRC proposes to clarify this section by stating that this fee exemption applies only when it is requested ^{from} ~~to~~, and granted ^{by} ~~from~~, the Chief Financial Officer (CFO) in writing. While this is ^(addressed to) consistent with current practice in requesting and granting these fee waivers, the NRC believes this revision would enhance clear communication about implementation of this fee waiver provision. ✓

6. Full Cost Recovery of Project Manager Time

The FY 1999 final fee rule (64 FR 31448; June 10, 1999) expanded the scope of part 170 fee assessments to include full cost recovery for project managers assigned to a specific plant or facility. Under this policy at §170.12(b)(iv), most project managers' time, excluding leave and time spent on generic activities such as rulemaking, is recovered through part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned. The NRC will begin applying this policy to license renewal project managers as of the effective date of this final rule. Although the NRC does not currently apply this full cost recovery policy to license renewal project managers, this change does not require a modification to its regulations. Rather, given the increase in license renewal activities since 1999 when full cost recovery for project managers was enacted, the NRC recognizes that the existing policy should apply to

license renewal project managers. However, because this is a change in the application of existing policy, the NRC is notifying licensees of this change through this proposed rule and will not implement it until the effective date of this final rule.

7. Administrative Amendments

The NRC is proposing to modify number or letter identifiers associated with the fee categories listed in §170.31, as well as make other minor administrative changes, such that the fee categories under part 170 are consistent with those used in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at §171.16(d). While the fee categories are, for the most part, consistent between the fee tables at §§170.21 and 171.16(d), in some instances they are slightly different. This change would enhance the NRC's ability to track part 170 and part 171 fees for license categories and simplify communication to licensees about applicable fee categories.

31? ✓

In summary, the NRC is proposing the following changes under 10 CFR part 170 --

1. Establish revised materials and reactor programs FTE hourly rates to better reflect the full cost of providing part 170 services;
2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise §§170.21 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties;

4. Revise §§170.02 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activities associated with unlicensed sites in decommissioning conducted under NRC oversight;

5. Revise §170.11 to clarify that certain fee waivers need to be requested to, and granted from, the CFO in writing;

6. Apply the existing policy at §170.12 of full cost recovery for project managers to license renewal project managers; and,



7. Make minor administrative changes to in §170.31 to enhance consistency in the identification of fee categories between part 170 and part 171.

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 2005 to reflect the FY 2005 budget and changes in the number of NRC licensees (including those resulting from the transfer of

regulatory authority to Agreement States), eliminate 'size of reactor' as a reason for granting annual fee exemptions, and make certain administrative amendments. The proposed amendments are as follows:

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2005. 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 2004. Based on the change in the magnitude of the budget allocated to certain classes of licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in decreased annual fees compared to FY 2004 for five classes of licenses (power reactors, test and research reactors, spent fuel storage/reactor decommissioning, rare earth mills, and transportation), and increased annual fees for two classes (fuel facilities and uranium recovery). For the materials users class, ~~all but~~ two categories (sub-classes) of licenses would have ~~increased~~ annual fees while ~~the remainder~~ ^{the remainder} would have ~~decreased~~ ^{increased} annual fees.

The annual fees in §§171.15 and 171.16 would be revised for FY 2005 to recover approximately 90 percent of the NRC's FY 2005 budget authority, less the estimated amount to

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|----|--|--------------|
| | activities not recovered under part 170) | \$2.8 |
| 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 | \$8.8 |
| b. | Licensing and inspection activities associated with other Federal agencies | \$1.4 |
| c. | Costs not recovered from small entities under 10 CFR [§] 171.16(c) _^ | \$6.1 |
| 3. | Activities supporting NRC operating licensees and others: | |
| a. | Regulatory support to Agreement States ¹ | \$13.9 |
| b. | Generic decommissioning/reclamation (except those related to power reactors) | \$10.0 |
| | Total surcharge costs | \$61.0 |
| | Less percent of NRC's FY 2005 total budget (less NWF) | <u>-60.1</u> |
| | Total Surcharge Costs to be Recovered | \$0.9 |



As shown in Table IV, \$0.9 million would be the total surcharge cost allocated to the various classes of licenses for FY 2005. The NRC would continue to allocate the surcharge costs to each class of licenses based on the percent of the budget for that fee class compared

¹This estimate includes the costs of homeland security activities associated with sources in Agreement States, even though regulatory authority remains with the NRC for these activities. However, fees are not assessed to sources in Agreement States for these activities, therefore these costs are included in this surcharge category.

to the NRC's total budget. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The proposed FY 2005 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.

Separately, the NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposal of certain classes of licenses. For FY 2005, the LLW surcharge costs are \$2.8 million.



TABLE V. - ALLOCATION OF SURCHARGE

| | LLW surcharge | | Non-LLW surcharge | | Total surcharge |
|-------------------------------------|---------------|-----|-------------------|-----|-----------------|
| | Percent | \$M | Percent | \$M | \$M |
| Operating Power Reactors | 74 | 2.1 | 82.3 | 0.8 | 2.8 |
| Spent Fuel Storage/ Reactor Decomm. | --- | --- | 4.7 | 0 | 0 |
| Nonpower Reactors | --- | --- | 0.1 | 0 | 0 |
| Fuel Facilities | 8 | 0.2 | 7.2 | 0.1 | 0.3 |
| Materials Users | 18 | 0.5 | 4.1 | 0 | 0.5 |
| Transportation | --- | --- | 1.0 | 0 | 0 |
| Rare Earth Facilities | --- | --- | 0.2 | 0 | 0 |
| Uranium Recovery | --- | --- | 0.4 | 0 | 0 |
| Total Surcharge | 100 | 2.8 | 100.0 | 0.9 | 3.7 |

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.nrc.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 2005 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately \$27.6 million compared to \$21.6 million in FY 2004. The annual fee increase is partly attributable to the decrease in estimated part 170 revenue for the fuel facility class compared to FY 2004. This FY 2005 decrease results ~~because~~ ^{from} part 170 fuel facilities' revenue in FY 2004 included ^{ing} a one-time adjustment (increase) for revenue to account for fuel facilities fees that were improperly coded and not factored into the fee calculations for FY 2001, FY 2002, and FY 2003, as discussed in the FY 2004 final fee rule. 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 six 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

DOE Annual Fee ^{extra space} Amount (UMTRCA Title I and Title II general licenses):



| | |
|---|--------------|
| UMTRCA Title I budgeted costs | \$ 400,570 |
| 50 percent of generic/other uranium recovery budgeted costs | 136,079 |
| 50 percent of uranium recovery surcharge | <u>1,864</u> |
| Total Annual Fee Amount for DOE | 538,513 |

Annual Fee Amount for UMTRCA Title II Specific Licenses:

| | |
|---|--------------|
| 50 percent of generic/other uranium recovery budgeted costs | 136,079 |
| 50 percent of uranium recovery surcharge | <u>1,864</u> |
| Total Annual Fee Amount for Title II Specific Licenses | 137,943 |

The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to equally weight the effort levels for each category of uranium recovery facilities, in accordance with the NRC's FY 2005 budgeted activities. It has also been revised to reflect two fewer uranium recovery facilities, in light of the fact that regulatory authority for these two facilities has been transferred to Utah (see discussion under 'Agreement State Activities' below). However, consistent with the methodology established in the FY 1995 fee rule (60 FR 32218; June 20, 1995), the approach 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);

entity fees were first established and changes that had occurred in the fee structure for materials licensees over time. While proposed fees for many of these selected categories of materials licensees would increase in FY 2005 compared to FY 2004, these fees are still lower, on average, than those charged in FY 2000, when small entity fees were last revised.

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 from FY 2000 to FY 2005, on average, for those categories of materials licensees that contain a number of small entities, 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 proposing to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2005. The NRC plans to re-examine the small entity fees again in FY 2007.

3. Agreement State Activities

On July August 10, 2004, the NRC approved an Agreement with the State of Utah under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended. This Agreement transferred to the State the Commission's regulatory authority for uranium mills and tailings. This ✓

program in the FY 1995 final fee rule (60 FR 32218; June 20, 1995) by establishing a uniform annual fee for power reactors, based on the fact that the difference in fees resulting from this more detailed analysis was small relative to the size of the annual fee per reactor. Therefore, the NRC believes that the current reference to 'size of the reactor' in §171.11(c), as a condition for granting annual fee exemptions, is no longer needed. No other class of licensee contains an exemption provision based on size.

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5. Administrative Amendments

The NRC is proposing to eliminate reference to specific facility names under Category 1.A of the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by the NRC' in §171.16. This administrative change would be made to streamline the fee schedule in light of the fact that the listing of individual facilities within a fee category is not necessary to identify license fee amounts. Given this change, a licensee within Category 1.A would determine its annual fee amount by the fee sub-category assigned to its license, as is the practice for other licensees.

Additionally, the NRC is proposing to modify §171.15(d)(1)(ii) and §171.16(e)(2) to clarify that activities comprising the annual fee surcharge include complex materials site decommissioning activities. Currently, these rule sections state that complex materials site decommissioning activities not covered under part 170 are included in the surcharge. Because this surcharge category also includes part 171, or generic costs associated with these decommissioning sites, the NRC is proposing to eliminate the phrase, 'not covered under part 170.' Note that if the regulatory revision to charge unlicensed sites in decommissioning, as

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✓

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.

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 these standards is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC would amend the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2005 as 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

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 90 percent of its FY 2005 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2005. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR [§] 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. [§] 604, is included as Appendix A to this proposed rule. ✓ -

The Small Business Regulatory Enforcement Fairness Act of 1996 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 2005.

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. ✓

List of Subjects

10 CFR Part 170 -- Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. [§]553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171. ✓

therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.

Amendment \$300.

¹ Fees will not be charged for orders related to civil penalties ^{or other sanctions} issued by the Commission under §2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties, ^{or other sanctions} fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. 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

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 related to civil penalties ^{or other sanctions} issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties ^{or other sanctions}, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. 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.

⁵ The NRC does not charge part 170 fees to Federal agencies, per 31 U.S.C. 9701.