



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

Office of Public Affairs

DATE 4-5-9

TO: Jim Holloway

FAX NUMBER: 442-4866 VERIFY: _____

NUMBER OF PAGES: 4 PLUS COVER SHEET

COMMENTS: _____

FROM INGRAM

U.S. Nuclear Regulatory Commission
Office of Public Affairs
301/504-2440 Fax Number 301/5043716

9504280197 950419
PDR PR
170 58FR21662 PDR

NOTE FOR JIM HOLLOWAY, OC

Attached is a draft public announcement of the proposed FY 1993 fee schedule. Note the blank in the reference to annual fees for reactor licensees. Please let me have any comments and/or suggestions you may have before including the draft with your Commission paper.

Frank Ingram - OPA
4/8/93 - 504-2240
5

NRC PROPOSES CHANGES IN FEE SCHEDULES;
SEEKS COMMENTS ON COURT DECISION

The Nuclear Regulatory Commission is proposing to amend its licensing, inspection and annual fee schedules to recover approximately 100 percent of its fiscal year 1993 budget.

The Commission also is seeking comments on its reconsideration of issues remanded by the U.S. Court of Appeals for the D.C. Circuit in a March 16 ruling relating to portions of the fiscal year 1991 fee schedule. The Court remanded to the Commission, for further consideration, the decision to exempt nonprofit educational institutions from the fee schedule on the grounds, in part, that they are unable to pass through the costs of the fees to their customers and the decision to allocate the generic costs associated with low-level radioactive waste management activities by groups of licensees rather than by individual licensee.

The proposed revisions implement the requirements of the Omnibus Budget Reconciliation Act of 1990 which requires the NRC to recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees.

The amount to be recovered in fiscal year 1993 is \$540 million less approximately \$21.1 million appropriated from the Nuclear Waste Fund.

Since the NRC's budget has increased, resulting in a corresponding increase in the professional hour^{per} rate, and the fact that, since the fee schedules for fiscal years 1991 and 1992

were adopted, approximately 2,300 licensees have requested that their licenses be terminated or combined, resulting in fewer licensees, the fees for most licensees represent increases over previous years.

The proposed revisions include an increase in the amount of annual fees assessed licensees operation^{N9} nuclear power plants from about ^{3.1}\$3.2 million to about ^{P3.2}(7) and increase the annual fees for other NRC licensees.

In addition, the proposed amendments, among other things, would:

-- increase the agency-wide professional hourly rate, which is used to determine Part 170 licensing and inspection fees, from \$123 to \$132 per hour;

-- establish a single inspection^{for}, instead of different fees for routine and nonroutine inspections;

-- exempt from fiscal year 1993 annual fees those licensees and holders of certificates, registration and approvals who either filed for termination of their license or approval or for a possession only/storage license before October 1, 1992, and were capable of permanently ceasing licensed activities^{entirely by} September 30, 1992;

-- continue a maximum annual fee of \$1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards; and

-- add a new fee category to specifically segregate and identify licenses authorizing the receipt of uranium or thorium tailings or wastes for possession and disposal.

→ revise the flat license and inspection fees to reflect the updated average number of professional staff hours;

Written comments on the proposed fiscal years 1993 fee schedule and on the proposed alternatives for addressing the U.S. Court of Appeals' remand issues should be received by (date). They should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.



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

APR 05 1993

OGC Comment

AE 49-1

PDR

MEMORANDUM FOR:

Patricia G. Norry, Director, ADM
Trip Rothschild, Deputy Assistant
General Counsel for Legal Counsel
Special Projects and Legislation, OGC

FROM:

Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller


SUBJECT:

PROPOSED NOTICE OF RULEMAKING -- 10 CFR PARTS
170 AND 171 -- 100% FEE RECOVERY FOR FY 1993
AND U.S. COURT OF APPEALS REMAND DECISION

Enclosed, for your concurrence, is a proposed rule for the fees to be assessed to recover 100 percent of the NRC budget authority for FY 1993. This rule has been reviewed by your staff and their comments resolved.

Please note that in order to meet the time schedule for this paper, we are providing each addressee a separate concurrence copy of the paper. Please provide your concurrence as quickly as possible, but not later than COB, Tuesday, April 6, 1993.

If you have any questions, please contact Jesse Funches on 492-7351 or Jim Holloway on 492-4301. Thank you for your continued cooperation on the NRC fee program.


Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure:
As stated

9504280191 1P

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AE49

Revision of Fee Schedules; 100% Fee Recovery, FY 1993;

Proposed Rule for FY 1991 and 1992 Implementing
the U.S. Court of Appeals Decision

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 Public Law 101-508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1993 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1993 is approximately \$518.9 million.

In addition, the NRC is soliciting comments on a proposed rule implementing the March 16, 1993, U.S. Court of Appeals for the District of Columbia Circuit decision remanding to the NRC portions of the FY 1991 annual fee rule. The remanded portions pertain to: (1) the NRC's decision to exempt nonprofit educational institutions, but not other enterprises, on the ground in part that educational institutions are unable to pass

through the costs of annual fees to their customers, and (2) the Commission's decision to allocate generic costs associated with low-level waste (LLW) disposal by groups of licensees, rather than by individual licensee. The NRC in this proposed rule is soliciting comments on the alternative approaches that may be taken on these issues in light of the court's decision. Because the court's reasoning calls into question portions of the NRC's FY 1992 annual fee rule, this proposed rule ~~also~~ addresses that rule as well.

DATES: The comment period expires (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 Public Law 101-508 requires that NRC collect the FY 1993 fees by September 30, 1993, and it is the NRC's current intent to resolve the court's remand issues no later than the issuance of the FY 1993 final rule, requests for extensions of the comment period will not be granted.

ADDRESSEES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays.

10 CFR Part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published three final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the Federal Register that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and method for determining the 10 CFR Part 170 hourly rate and fees, and the 10 CFR Part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties and the U.S. Court of Appeals for the District of Columbia Circuit decided the lawsuits on March 16, 1993. The Court case and the NRC's request for comment on the issues remanded by the court are discussed in Section II.

↑ of this rulemaking

On April 17, 1992 (57 FR 13625), the NRC published in the Federal Register two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 adjusted the maximum annual fee of \$1,800 assessed a materials licensee who qualifies as a

for this action would allow for a 90-day public comment period.

II. U.S. Court of Appeals ^{for the} ~~at~~ District of Columbia
Circuit Remand Decision -- FY⁻⁹³ 1991 Fee Schedule

On March 16, 1993, the U.S. Court of Appeals for the District of Columbia Circuit decided Allied-Signal, Inc. v. U.S. Nuclear Regulatory Commission and the United States of America, No. 91-1407 and Consolidated Cases. The court remanded for reconsideration two aspects of the NRC's FY 1991 annual fee rule, codified at 10 CFR Part 171. First, the court questioned the Commission's decision to exempt nonprofit educational institutions from Commission fees on the ground (in part) that they are unable to pass through the costs of those fees to their customers, without attempting a similar "passthrough" analysis for other licensees. Second, the court questioned the Commission's decision to allocate generic costs associated with low-level waste (LLW) disposal by classes of licensees, rather than by individual licensees.

The court did not vacate the FY 1991 rule, but returned it to the Commission for a better explanation or for appropriate changes in the rule. The Commission in this rulemaking seeks comments on its proposed response to the Court decision. The comments should address not only the "passthrough" and "LLW" aspects of the FY 1991 rule, but also the same aspects of the FY

barred from charging annual fees to licensees with an inability to pass through fees to customers through higher prices. Indeed, the court commented that "[b]ecause [price] elasticities are typically hard to discover with much confidence, the Commission's refusal to read the statute as a rigid mandate to do so is not only understandable but reasonable." Slip op. at 6-7.

The court found, however, that the Commission had not consistently declined to consider passthrough concerns. The court noted that the Commission chose to exempt nonprofit educational institutions on the ground (in part) of an inability to pass through costs to customers. Because the rule did not address why it was possible to calculate the effects of passthrough on educational institutions but not on UF6 converters like Allied, the court remanded that portion of the rule to the Commission to "develop a reasoned treatment" of passthrough-based claims. The court suggested that ~~the "externalize benefits"~~ of education alone, unhinged from a general "passthrough" rationale, might "yield exceptionally large externalize^d benefits that cannot be captured in tuition or other market prices." Slip op. at 8. The court also ordered the Commission to consider on remand a related claim of Combustion Engineering, Inc. ("CE"), that long-term fixed price contracts in its business (production of low enriched uranium) required a phase-in of passed-through costs.

Despite the remand, the court did not vacate the rule, both

questions and provides training in nuclear science." See NRC Final Rule, 56 Fed Reg. at 31477 (1991). The commenters described how imposition of fees on their nuclear programs would lead, in many cases, to severe cutbacks in and shutdowns of these programs. This in turn would lead to shortages of scientific personnel trained in the use of radioactivity in such areas as reactor safety, with detrimental effects suffered not only by nuclear science but by society at large. The court itself suggested that NRC financial incentives to education may be justified because of the possibility of "externalize^d benefits" that cannot be captured in tuition or other market prices." Slip op. at 8.

The Commission therefore is soliciting comments on whether to leave the exemption for nonprofit educational institutions in place on the ground of supporting education for the benefits it provides both to the nuclear field and to society as a whole. In particular, the Commission invites public comments on the court's suggested "externalize^d benefits" approach. The Commission also invites public comments on whether to discontinue the educational exemption.

LLW Costs

a. Court Decision. Allied argued to the court that the Commission allocated generic LLW costs for fuel facilities, which


the sites where LLW was disposed of in FY 1991-1993 are licensed and regulated by Agreement States, not the NRC.

Given the 100% budget recovery requirement of OBRA-90, and the fact that there are no NRC LLW licensees^{from which} to recover FY 1991-1993 budgeted costs for NRC generic activities, the basic question is how should NRC allocate these costs. Congress spoke briefly to this issue in developing OBRA-90 by recognizing that certain expenses cannot be attributed directly either to an individual license or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge, even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. 1356 Cong Rec. at H12692, 3.

Consistent with the Congressional guidance, the Commission concluded that all classes of NRC licensees ^{which} ~~that~~ generate a substantial amount of LLW should be assessed annual fees to cover the agency's generic LLW costs. The NRC viewed current LLW generation as a reasonable proxy for benefits likely to accrue in the future from the NRC's LLW program. The court appeared to approve this basic approach, but questioned the method for determining the amount of the fee to be assessed to each of the

licensees that generate LLW. The NRC believes that there are three alternatives (with variations within each alternative) for determining the LLW fee amount for the various licensees. However, as noted above, none of these alternatives is intended to recover the cost of a service provided during a particular year, but instead is intended to recover today's costs for a future benefit (the availability of LLW disposal).

Within the above context, and given the court opinion, the Commission is considering the following three alternatives for determining the amount of the LLW surcharge (fee) to be assessed to the various licensees:

- 28*
put in
numbers for
FYs 1991 + '92,
or take second
sentence out.
- (1) Assess all licensees that generate LLW a uniform annual fee. In FY 1993, the uniform annual fee would be \$7,900.
 - (2) Allocate the LLW budgeted cost based on the amount of LLW disposed of by groups of licensees and assess each licensee in a group the same annual fee as was done in the FY 1991 and FY 1992 rules.
 - (3) Assess each licensee an annual fee based on the amount of waste generated/disposed by the individual licensee, as was suggested by Allied-Signal and by the court. 

Under alternative 1, the NRC would not try to distinguish between the potential future benefits to the diverse NRC licensees, but would assess the same LLW fee to all NRC licensees that generate low level waste, regardless of amount of LLW generated. The theory is, as expressed by the court, "that the real benefit of LLW disposal is merely the availability of such services." Slip op. at 11. This alternative would result in a hospital, for example, paying the same LLW annual fee as a reactor, who would pay the same LLW annual fee as a fuel facility. The Commission currently has difficulty perceiving this as a fair and equitable means to determine licensees' future benefits from the Commission's LLW program, but will consider the approach after receiving comments.

Alternative 2 rests on the premise that it is not possible to predict the exact future benefit for each individual licensee (for reasons discussed below), but that current volume of LLW disposed by each class of licensees is a good gross indicator of the relative future benefit to the various classes. In other words, the LLW volume disposed today is a good proxy for future benefits -- but in a "macro", not a "micro" sense. The Commission believes fairness and equity support keeping this broad approach in effect.

There are various ways to separate the licensees by classes. The FY 1991-1993 rules separate the licensees by the same classes

For one thing, many licensees (particularly large ones) have access to technology that compacts large volumes of LLW into small packages for disposal. Thus, individual disposal data do not necessarily reflect a fair and accurate comparison of waste generated among individual licensees. In addition, some licensees by choice or by law store waste (temporarily) rather than dispose of it. These licensees' LLW would not be picked up in the NRC's disposal data. For example, NRC licensees in Michigan did not dispose of any waste in 1991 or 1992 because by law they were not permitted to use existing LLW disposal sites. However, these licensees obviously will benefit in the future just as much as, or maybe more than, others from NRC regulatory costs do today, since ultimately Michigan must dispose of its LLW. But under a licensee-by-licensee alternative based on disposal data, the annual fee assessed to licensees in Michigan would have to be zero, implying no future benefits to each licensee. Finally, it is far from clear that most NRC licensees would willingly permit use of individual disposal data for fee purposes, due to proprietary concerns. Plainly, if the NRC developed a fee structure based on individual licensee disposal data, the amount of LLW disposed of by specific licensees would be revealed to the public and to competitors.

On balance, while the NRC recognizes that there are many conceivable ways to allocate its low level waste cost, it does

Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Describe why this is necessary
Fourth, irradiator fee Categories 3F and 3G are being broadened to include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating 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 NRC.

The NRC proposes five amendments to 10 CFR Part 171. First, NRC proposes to amend §§ 171.15, and 171.16 to increase the annual fees for FY 1993 to recover approximately 100 percent of the FY 1993 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Second, the NRC proposes to amend § 171.11 by renumbering and restating paragraph (a) as (a)(1), and by adding a new paragraph (a)(2). In addition, paragraphs (b) and (d) would be revised. These proposed changes would incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for

[less space] ↘
11.e. (2) of the Atomic Energy Act for possession and disposal. Section 11.e. (2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Fifth, additional language is proposed for irradiator fee Categories 3F and 3G to clarify that those two fee categories include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

The NRC notes that the impact of the proposed fees for FY 1993 on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A to this proposed rule). Based on this analysis, the NRC is proposing to continue for FY 1993 a maximum annual fee of \$1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The NRC is also proposing to continue for FY 1993 the lower tier small entity annual fee of \$400 per licensed category for certain materials licensees, which was established by the NRC in FY 1992 (57 FR 13625; April 17, 1992).

The 10 CFR Part 171 annual fees have been determined using the same method used to determine the FY 1991 and FY 1992 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the increased professional hourly rate. The proposed amendments to 10 CFR Part

average number of hours on which inspection fees are based have⁵ not been updated since 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional hours used in the current fee schedule for inspections is outdated. During the past eight years, the NRC's inspection program has changed significantly. For example, NRC management guidance in recent years has emphasized that, based on historical enforcement actions, inspections be more thorough and in-depth so as to improve public health and safety.

The review of the inspection information also indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most fee categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed. For these reasons, the NRC is proposing for fee purposes to combine routine and nonroutine inspection fees into a single fee rather than separate fees for routine and nonroutine inspections. This proposed inspection fee will be assessed for either a routine or a nonroutine inspection conducted by the NRC.

The amounts of the licensing and inspection flat fees were rounded, as in FY 1991 and FY 1992, by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to

(III) An experimental facility in the core in excess of 16 square inches in cross-section.

The NRC, in implementing this provision of the Energy Policy Act, intends to limit the exemption in 10 CFR Part 171 only to Federally owned research reactors.

The NRC, in making this required change, is not intending to change its exemption policy. As in FY 1991 and FY 1992, the NRC plans to continue a very high eligibility threshold for exemption requests and reemphasizes its intent to grant exemptions sparingly. Therefore, the NRC strongly discourages the filing of exemption requests by licensees who have previously had exemption requests denied unless there are significantly changed circumstances.

The NRC is proposing to revise § 171.11(b) to not only require that requests for exemptions be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees but also to require that clarification of or questions relating to annual fee bills must also be filed with in 90 days from the date of the invoice. *one word*

Earlier in this notice, the NRC has discussed its proposal to continue exempting nonprofit educational institutions from

annual fees for FY 1993.

Exemption requests, or any requests to clarify the bill, will not, per se, extend the interest-free period for payment of the bill. Bills are due on the effective date of the final rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges.

Experience in considering exemption requests under §171.11 has indicated that § 171.11(d) is ambiguous regarding whether an applicant must fulfill all, or only one, of the three factors listed in the exemption provision in order to be considered for an exemption. The NRC is clarifying the section to indicate that the three factors should not be read as conjunctive requirements but rather ~~should be read~~ as independent considerations which can support an exemption request.

The NRC notes that Section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees, under Section 6101(c) of OBRA-90, solicit comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees, particularly those who hold licenses to operate Federally owned research reactors used primarily for educational training and academic research purposes. The NRC intends to solicit public

to be assessed for each major type of operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1993 annual fee for non-power (test and research) reactors. In FY 1993, \$520,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in an annual fee of \$65,000 per operating license. The Energy Policy Act provided for an exemption for certain Federally owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. The NRC has granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center, Omaha, Nebraska, for ^{its} ~~their~~ research reactor.

Section 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.

Paragraph (d) would be revised to reflect the FY 1993 budgeted costs for materials licensees, including Government agencies licensed by the NRC. These fees are necessary to recover the FY 1993 generic costs totalling \$55.1 million applicable to fuel facilities, uranium recovery facilities,

UF₆ ConversionSafeguards and Safety

Allied Signal Corp.
Sequoyah Fuels Corp.

\$662,000

662,000

Subtotal

\$1,324,000

Other fuel facilities
(5 facilities at \$122,000
each)

\$610,000

Total

\$14,421,000

One of the Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, that directed the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC proposes to grant an exemption for one of CE's low enriched uranium fuel facilities for FY 1992 and FY 1993. ~~As a result,~~ ^T ~~the~~ ^{therefore} NRC will calculate its FY 1993 annual fees for the low enriched fuel category by dividing its budgeted costs among five licenses rather than six licenses as done previously.

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 50 percent of the \$465,000 for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 27 percent of the \$465,000 for uranium recovery is attributable to those

licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

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).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in Skinner v. Mid-American Pipeline Co., 109 S. Ct. 1726 (1989), and the denial of certiorari in Florida Power and Light, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld recently by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, discussed extensively earlier in this notice.

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges



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

APR 05 1993

DiANE
OC-LEDCB
Comments
4/6/93

MEMORANDUM FOR:

Patricia G. Norry, Director, ADM
Trip Rothschild, Deputy Assistant
General Counsel for Legal Counsel
Special Projects and Legislation, OGC

AE49-1
PDR

FROM:

Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

SUBJECT:

PROPOSED NOTICE OF RULEMAKING -- 10 CFR PARTS
170 AND 171 -- 100% FEE RECOVERY FOR FY 1993
AND U.S. COURT OF APPEALS REMAND DECISION

Enclosed, for your concurrence, is a proposed rule for the fees to be assessed to recover 100 percent of the NRC budget authority for FY 1993. This rule has been reviewed by your staff and their comments resolved.

Please note that in order to meet the time schedule for this paper, we are providing each addressee a separate concurrence copy of the paper. Please provide your concurrence as quickly as possible, but not later than COB, Tuesday, April 6, 1993.

If you have any questions, please contact Jesse Funches on 492-7351 or Jim Holloway on 492-4301. Thank you for your continued cooperation on the NRC fee program.

Ronald M. Scroggins
Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure:
As stated



26400
1720
28120

2 conc

4/6/93
Lee Hill

358400
23820
282,220

9504280797 1p

1992 rule and the proposed FY 1993 rule.¹ The Commission will consider all "passthrough" and "LLW" comments together in connection with all three rules.² These issues are explored in more detail below.

Cost Passthrough

a. Court Decision. The court initially addressed the claim, advanced by Allied-Signal, Inc., that the Commission failed to consider the inability of uranium hexafluoride (UF6) converters to pass through the costs of their annual fees to their customers. Allied claimed that its competitive position was weak, that sales turned on as little as one cent per pound, and that NRC annual fees placed an intolerable burden on competitiveness, especially as foreign converters are not charged annual fees. Allied pointed to legislative history of the NRC fee statutes suggesting the Commission "take [passthrough] into account" when charging fees to, among others, uranium producers. The court rejected Allied's statutory argument. The court ruled that the legislative history did not mean that the Commission was

¹The Court remanded only the FY 1991 rule, ~~but~~ the FY 1992 rule and the proposed FY 1993 rule raise identical questions. The same petitioners who challenged the FY 1991 rule in court also brought a judicial challenge to the FY 1992 rule. The NRC expects the court to decide the FY 1992 challenge promptly, and in accord with the Court's decision in the FY 1991 rule.

²In a separate request for public comments, the NRC in April 1993 will also be publishing another Federal Register notice requesting public views on the overall administration of and policy underlying its annual fee rules pursuant to section 2903(c) of Public Law 102-486 (the Energy Policy Act of 1992).

8

barred from charging annual fees to licensees with an inability to pass through fees to customers through higher prices. Indeed, the court commented that "[b]ecause [price] elasticities are typically hard to discover with much confidence, the Commission's refusal to read the statute as a rigid mandate to do so is not only understandable but reasonable." Slip op. at 6-7.

The court found, however, that the Commission had not consistently declined to consider passthrough concerns. The court noted that the Commission chose to exempt nonprofit educational institutions on the ground (in part) of an inability to pass through costs to customers. Because the rule did not address why it was possible to calculate the effects of passthrough on educational institutions but not on UF6 converters like Allied, the court remanded that portion of the rule to the Commission to "develop a reasoned treatment" of passthrough-based claims. The court suggested that the "externalize benefits" of education alone, unhinged from a general "passthrough" rationale, might "yield exceptionally large externalize^A benefits that cannot be captured in tuition or other market prices." Slip op. at 8. The court also ordered the Commission to consider on remand a related claim of Combustion Engineering, Inc. ("CE"), that long-term fixed price contracts in its business (production of low enriched uranium) required a phase-in of passed-through costs.

Despite the remand, the court did not vacate the rule, both

questions and provides training in nuclear science." See NRC Final Rule, 56 Fed Reg. at 31477 (1991). The commenters described how imposition of fees on their nuclear programs would lead, in many cases, to severe cutbacks in and shutdowns of these programs. This in turn would lead to shortages of scientific personnel trained in the use of radioactivity in such areas as reactor safety, with detrimental effects suffered not only by nuclear science but by society at large. The court itself suggested that NRC financial incentives to education may be justified because of the possibility of "externalized benefits that cannot be captured in tuition or other market prices." Slip op. at 8.

The Commission therefore is soliciting comments on whether to leave the exemption for nonprofit educational institutions in place on the ground of supporting education for the benefits it provides both to the nuclear field and to society as a whole. In particular, the Commission invites public comments on the court's suggested "externalize benefits" approach. The Commission also invites public comments on whether to discontinue the educational exemption.

LLW Costs

a. Court Decision. Allied argued to the court that the Commission allocated generic LLW costs for fuel facilities, which

totalled \$1.9 million in FY 1991, in an arbitrary and capricious manner. The court assumed that the agency possessed licensee-specific LLW generation data, and found that the NRC lacked justification for allocating LLW costs simply by the amount of LLW generated per class, instead of allocating the costs licensee-by-licensee. The court stated:

[a]ssuming that the Commission calculated each class's quantity of LLW waste from data supplied by each licensee (as seems necessarily true), it is hard to see any administrative problem with apportioning the fees within the class on the basis of output; the data are available and the required computations would be rudimentary.

Slip op. at 11.

To avoid what it viewed as an unjust windfall (i.e., complete vacation of the LLW fees, and full refunds), the court did not vacate this part of the FY 1991 rule. It instead remanded the LLW issue to the Commission for reconsideration. The court indicated that if on remand the Commission decided to charge LLW costs based on the amount of waste produced by each licensee, ☐ licensees could permissibly receive refunds for the difference between what they paid under the old and new rules, rather than total refunds.

b. Proposed Resolution. The options for addressing the remand should be developed and analyzed in view of the purpose of the NRC budgeted resources for LLW disposal. To implement the

that are used for all other annual fees. Obviously this approach results in efficiencies for the NRC annual fee billing process. But there are other possibilities. The Commission could divide the licensees into two categories -- "large" waste generators and "small" waste generators. Under this alternative, reactor and major fuel facilities, for example, could comprise a single group of large generators paying larger fees; and other licensees could comprise a group of small generators paying smaller fees.

Alternative 3 would base the annual fee for LLW on the amount of waste generated by each licensee during a particular year. This is the approach apparently favored by the court, and would of course be a "fair and equitable" indicator of future benefits if (as the court assumed) the NRC had ready access to reliable licensee-by-licensee data on waste generation. But it does not. The Commission's gross data on LLW derive from LLW disposal data it receives through various means from existing LLW waste disposal sites. These data are roughly accurate with regard to large classes of licensees, ^{and ??} as it is reasonable to assume that individual distortions even out over the years and over relatively large numbers of licensees. But the NRC sees problems in using the waste disposal data as a proxy for future benefits to individual licensees. The amount of waste disposed of annually by individual licensees is affected by many variables that do not relate to the amount of waste generated by each licensee.

For one thing, many licensees (particularly large ones) have access to technology that compacts large volumes of LLW into small packages for disposal. Thus, individual disposal data do not necessarily reflect a fair and accurate comparison of waste generated among individual licensees. In addition, some licensees by choice or by law store waste (temporarily) rather than dispose of it. These licensees' LLW would not be picked up in the NRC's disposal data. For example, NRC licensees in Michigan did not dispose of any waste in 1991 or 1992 because by law they were not permitted to use existing LLW disposal sites. However, these licensees obviously will benefit in the future just as much as, or maybe more than, others^{do} from NRC regulatory costs ~~do~~ today, since ultimately Michigan must dispose of its LLW. But under a licensee-by-licensee alternative based on disposal data, the annual fee assessed to licensees in Michigan would have to be zero, implying no future benefits to each licensee. Finally, it is far from clear that most NRC licensees would willingly permit use of individual disposal data for fee purposes, due to proprietary concerns. Plainly, if the NRC developed a fee structure based on individual licensee disposal data, the amount of LLW disposed of by specific licensees would be revealed to the public and to competitors.

On balance, while the NRC recognizes that there are many conceivable ways to allocate its low level waste cost, it does

guidance in recent years has emphasized that inspections be more thorough, in-depth and of higher quality. The proposed inspection fees are based on the new average professional staff hours necessary to conduct the inspections multiplied by the proposed professional hourly rate for FY 1993 of \$132 per hour.

In summary, the NRC is proposing to revise both materials licensing and inspection fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost ^{to} of the agency of providing the service.

The review of the inspection information also indicates that over 90 percent of the inspections conducted by NRC are routine inspections. As a result, for most fee categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed. For these reasons, the NRC is proposing, for fee purposes, to establish a single inspection fee rather than separate fees for routine and nonroutine inspections. This proposed inspection fee would be assessed for either a routine or a nonroutine inspection conducted by the NRC.

Third, a new fee category 4D is proposed to specifically segregate and identify licenses authorizing the receipt from other persons of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal.

Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Fourth, irradiator fee Categories 3F and 3G are being broadened to include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating 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 NRC.

The NRC proposes five amendments to 10 CFR Part 171. First, NRC proposes to amend §§ 171.15, and 171.16 to ^{revise} ~~increase~~ the annual fees for FY 1993 to recover approximately 100 percent of the FY 1993 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Second, the NRC proposes to amend § 171.11 by renumbering and restating paragraph (a) as (a)(1), and by adding a new paragraph (a)(2). In addition, paragraphs (b) and (d) would be revised. These proposed changes would incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for

This distribution results in an additional charge (surcharge) of approximately \$289,000 per operating power reactor; \$100,000 for each HEU, LEU, UF₆ and each other fuel facility license; \$1,600 for each materials license in a category that generates a significant amount of low level waste; and \$120 for other materials licenses. When added to the base annual fee of approximately \$2.9 million per reactor, this will result in an annual fee of approximately \$3.2 million per operating power reactor. The total fuel facility annual fee would be between approximately \$710,000 million and \$3.3 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

These proposed additional charges not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of previous Commission policy decisions would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in Section IV of this proposed rule.

The NRC notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," Florida Power & Light Co. v. NRC, 846 F.2d 765, 770 (D.C. Cir. 1988), cert. denied, 109

health and safety. The average number of hours for materials licensing actions (new licenses, renewals and amendments) have not changed significantly for most categories. For new license applications, approximately 60 percent of the materials license population would have increases of less than 25 percent, with some having slight decreases. For license renewals, approximately 85 percent would have increases of less than 25 percent, with some having decreases; and for amendments, approximately 90 percent would have increases of less than 25 percent with some having decreases. Only 2 percent of the materials license population would have increases of 100 percent or greater, for example, in the renewal area, irradiator licenses (fee Categories 3F and 3G) and licenses authorizing distribution of items containing byproduct material to persons generally licensed under 10 CFR Part 31 (fee Category 3J).

For materials inspections, a distribution of the changes to the inspection fees shows that inspection fees would increase by at least 100 percent for 19 percent of the licenses. The largest increases would be for inspections conducted of those licenses authorizing byproduct material for 1) ^{broad scope} processing or manufacturing of items for commercial distribution (fee category 3A); 2) broad scope research and development (fee category 3L); and 3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses would have increases of more than 50 percent. The primary reason for these relatively large increases is that the

(III) An experimental facility in the core in excess of 16 square inches in cross-section.

The NRC, in implementing this provision of the Energy Policy Act, intends to limit the exemption in 10 CFR Part 171 only to Federally owned research reactors.

The NRC, in making this required change, is not intending to change its exemption policy. As in FY 1991 and FY 1992, the NRC plans to continue a very high eligibility threshold for exemption requests and reemphasizes its intent to grant exemptions sparingly. Therefore, the NRC strongly discourages the filing of exemption requests by licensees who have previously had exemption requests denied unless there are significantly changed circumstances.

7.
The NRC is proposing to revise § 171.11(b) to not only require that requests for exemptions be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees but also to require that clarification of or questions relating to annual fee bills must also be filed with in 90 days from the date of the invoice.

Earlier in this notice, the NRC has discussed its proposal to continue exempting nonprofit educational institutions from

annual fees for FY 1993_x (170.11(a)).

Exemption requests, or any requests to clarify the bill, will not, per se, extend the interest-free period for payment of the bill. Bills are due on the effective date of the final rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges.

Experience in considering exemption requests under §171.11 has indicated that § 171.11(d) is ambiguous regarding whether an applicant must fulfill all, or only one, of the three factors listed in the exemption provision in order to be considered for an exemption. The NRC is clarifying the section to indicate that the three factors should not be read as conjunctive requirements but rather should be read as independent considerations which can support an exemption request.

The NRC notes that Section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees, under Section 6101(c) of OBRA-90, solicit comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees, particularly those who hold licenses to operate Federally owned research reactors used primarily for educational training and academic research purposes. The NRC intends to solicit public

Table IV

ALLOCATION OF NRC FY 1993 BUDGET TO POWER REACTORS BASE FEES^{1/}

	Program Element		Allocated to	
	Total		Power Reactors	
	Program Support (\$K)	Direct FTE	Program Support (\$K)	Direct FTE
REACTOR SAFETY AND SAFEGUARDS REGULATION (RSSR)				
Standard Reactor Designs	\$6,663	111.2	\$6,363	103.5
Reactor License Renewal	913	14.6	913	14.6
Reactor and Site Licensing	1,015	24.4	995	24.1
Resident Inspections	---	204.0	---	204.0
Region-Based Inspections	4,628	245.5	4,628	240.3
Interns (HQ and Regions)	---	45.0	---	45.0
Special Inspections	3,157	60.7	3,157	60.7
License Maintenance and Safety Evaluations	8,606	222.3	8,606	222.3
Plant Performance	860	55.1	860	55.1
Human Performance	6,920	61.0	6,470	56.4
Other Safety Reviews and Assistance	988	36.1	<u>658</u>	<u>29.7</u>
RSSR PROGRAM TOTAL			\$32,650	1,055.7

Table IV
(Continued)

	Program Element Total		Allocated to Power Reactors	
	Program Support (\$,K)	Direct FTE	Program Support (\$,K)	Direct FTE
REACTOR SAFETY RESEARCH (RSR)				
Standard Reactor Designs	\$20,200	29.6	\$20,200	29.6
Reactor Aging & License Renewal	22,293	13.4	21,493	13.3
Plant Performance	2,800	3.0	2,800	3.0
Human Reliability	6,150	7.2	6,150	7.2
Reactor Accident Analysis	22,102	26.0	22,102	26.0
Safety Issue Resolution and Regulatory Improvements	11,590	38.5	<u>11,590</u>	<u>38.5</u>
RSR PROGRAM TOTAL			\$84,335	117.6
NUCLEAR MATERIAL & LOW LEVEL (NMLL)				
<u>NMLL (NMSS)</u>				
Safeguards Licensing and Inspection	\$440	19.4	\$--	.1
Threat & Event Assess./ International Safeguards	1,600	12.7	1,275	6.1
Develop & Implement Inspection Activities	0	2.3	0	1.3
Uranium Recovery Licensing and Inspection	350	9.7	38	.2
Decommissioning	1,200	30.1	200	5.6
<u>NMLL (RES)</u>				
Environmental Policy and Decommissioning	1,925	9.0	<u>825</u>	<u>3.8</u>
NMLL PROGRAM TOTAL			\$2,338	17.1

Table IV
(Continued)

	Program Element Total		Allocated to Power Reactors	
	Program Support (\$..K)	Direct FTE	Program Support (\$..K)	Direct FTE
REACTOR SPECIAL AND INDEPENDENT REVIEWS, INVESTIGATIONS, AND ENFORCEMENT				
Diagnostic Evaluations	350	7.0	\$350	7.0
Incident Investigations	25	1.0	25	1.0
NRC Incident Response	2,005	24.0	2,005	24.0
Operational Experience Evaluation	5,360	34.0	5,360	34.0
Committee on Review Generic Requirements	---	2.0	---	2.0
RSIRIE PROGRAM TOTAL			<u>\$7.740</u>	<u>68.0</u>
TOTAL			\$127,063	1,258.4

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	\$416.4 million ^{2/}
LESS ESTIMATED PART 170 POWER REACTOR FEES	\$100.0 million
PART 171 BASE FEES FOR OPERATING POWER REACTORS	<u>\$316.4</u> million

^{1/} Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

proposed changes^{potential} is based on the NRC's recognition of increased activity related to disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license.

Paragraph (e) would be amended to establish the additional charge which is to be added to the base annual fees shown in paragraph (d) of this proposed rule. The options the NRC is considering in this area are discussed at some length in Section II of this notice. This surcharge will continue to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. The NRC has continued the previous policy decision to use the volume of waste ~~disposed~~^{disposed} of by materials licensees to determine the percent of these LLW costs to be recovered from materials licensees. The additional charge will recover approximately 33 percent of the NRC budgeted costs of \$9.4 million relating to LLW disposal generic activities because these materials licensees disposed of 33 percent of the total LLW that was disposed of by NRC licensees in 1990-1991. This percentage calculation for FY 1993 differs from the calculation for FY 1991 and FY 1992 because LLW disposed by Agreement State licensees was subtracted from the total prior to calculation of the percentage. The FY 1993 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

<u>Category of Costs</u>	FY 1993 Budgeted Costs (<u>\$ In Millions</u>)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 33% of LLW disposal generic activities.	\$3.1

Of the \$3.1 million in budgeted costs shown above for LLW activities, 45 percent of the amount (\$1.4 million) would be allocated to fuel facilities included in Part 171 (14 facilities), as follows: \$100,000 per HEU, LEU, UF₆ facility and for each of the other 5 fuel facilities. The remaining 55 percent (\$1.7 million) would be allocated to the material licensees in categories that generate low level waste (1,049 licensees) as follows: \$1,600 per materials license~~X~~ except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the \$1,600 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for Category 17, which also generate and/or dispose of low level waste, is \$23,700, ~~for Category 17.~~

Of the \$5.3 million not recovered from small entities, \$0.8 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of \$120 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, would pay a base

among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1993.

The proposed rule results in an increase in the fees charged to ~~all~~ ^{most} licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

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 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.

1992 rules as appropriate. 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 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. In no event will the total review costs be less than twice the hourly rate shown 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

possession, use and ^{or} installation of
source material for shielding. \$680

Surcharge \$120

C. All other source material licenses. \$7,600

Surcharge \$1,720

3. Byproduct material:

A. Licenses of broad scope for possession
and use of byproduct material issued
pursuant to Parts 30 and 33 of this
chapter for processing or manufacturing
of items containing byproduct material
for commercial distribution. \$17,000

Surcharge \$1,720

B. Other licenses for possession and use
of byproduct material issued pursuant
to Part 30 of this chapter for
processing or manufacturing of items
containing byproduct material for
commercial distribution. \$5,000

Surcharge \$1,720

Surcharge	\$120
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.	\$

Surcharge	\$120
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72.	N/A ^{2/}
15. Import and Export licenses	N/A ^{8/}
16. Reciprocity	N/A ^{8/}
17. Master materials licenses of broad scope issued to Government agencies.	\$358,400

Surcharge	\$23,700
---------------------	----------

+120 ??

The NRC established, and is proposing to continue for FY 1993, a maximum annual fee for small entities. 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. For FY 1993, the NRC proposes to rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees or any adjustments to these fees during the past year do not have a significant impact on them. In issuing this proposed rule for FY 1993, the NRC concludes that the proposed materials license and inspection fees do not have a significant impact on ^{a substantial number of} small entities and that the maximum small entity fee of \$1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1993 costs (\$29.8 million of the total \$35.1 million) attributable to them. Therefore, the NRC is proposing to continue, for FY 1993, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800