



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

April 8, 1992

PDR 17
AE 20-1

MEMORANDUM FOR: Ronald M. Scroggins, Deputy
Chief Financial Officer/Controller

FROM: Patricia G. Norry, Director
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON PROPOSED RULE ENTITLED,
"REVISION OF FEE SCHEDULES; 100% FEE RECOVERY,
FY 1992"

The Office of Administration (ADM) concurs on the proposed rule that would amend the regulations governing the assessment of license and annual fees. The proposed rule would establish the licensing, inspection, and annual fees which are necessary to recover the NRC budget authority in FY 1992. We have attached a marked copy of the proposed rule package that presents our comments and editorial corrections.

When the proposed rule is forwarded to the EDO for approval and signature, it should be presented under a memorandum to the EDO that describes the action and requests his approval and signature. We have attached a sample memorandum to the EDO.

If you have any questions concerning this matter, please have a member of your staff contact Michael T. Lesar, Rules and Directives Review Branch, ADM (extension 27758).

Patricia G. Norry
Patricia G. Norry, Director
Office of Administration

Attachments: As stated

Approved for Publication

The Commission delegated to the EDO (10 CFR Part 1.31(a)(3)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)) subject to the limitations in NRC Manual Chapter 0103, Organization and Functions, Office of the Executive Director for Operations, Paragraphs 0213, 038, 039 and 0310.

Management Directive 9.17

The enclosed proposed rule will amend 10 CFR Parts 170 and 171. These amendments are necessary to implement the requirements of Public Law 101-508 to recover 100 percent of the FY 1992 budget authority through license and annual fees.

The proposed rule is consistent with previous Commission fee policy decisions and does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8 or 9 Subpart C concerning matters of policy. I, therefore, find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

Date

James M. Taylor
Executive Director
for Operations

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AE20

Revision of Fee Schedules; 100% Fee Recovery, FY 1992

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, signed into law on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1992 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1992 is \$492.5 million.

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 Commission 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 revised fees by September 30, 1992, requests for extensions of the comment period will not be granted. Further, the Commission contemplates that any fees to be collected as a result of this

Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Proposed Action.
- III. Section-by-Section Analysis.
- IV. Environmental Impact: Categorical Exclusion.
- V. Paperwork Reduction Act Statement.
- VI. Regulatory Analysis.
- VII. Regulatory Flexibility Analysis.
- VIII. Backfit Analysis.

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), signed into law on November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing license, inspection, and annual fees.

On July 10, 1991, ^(56 FR 31472) the Nuclear Regulatory Commission published in the Federal Register a final rule which 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 (~~56 FR 31472~~)². The rule became effective August 9, 1991. In addition to establishing the FY 1991 fees, the August 9, 1991, final rule established the underlying basis and method for determining the Part 170 hourly rate and fees and the Part 171 annual fees.

This proposed rule reflects the limited changes made to 10 CFR Parts 170 and 171 which were published for comment on January 9, 1992 (57 FR 847) and ~~finalized~~ ^{issued as a final rule} on April __, 1992 (57 FR __). The limited change to Part 170 allows the NRC to bill ^{effective -- 1/1/92} quarterly for those license fees that are currently billed every six months. The limited change to Part 171 adjusts the maximum annual fee assessed a materials licensee who qualifies as a small entity under the NRC's size standards. The maximum annual fee of \$1,800 per licensed category was continued for FY 1992. However, a lower tier small entity fee of \$400 per licensed category was established for small businesses and non-profit organizations with gross receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

II. Proposed Action

Public Law 101-508 requires that the NRC recover approximately 100 percent of its FY 1992 budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF, by assessing

license and annual fees.

For FY 1992, the NRC's budget authority is \$512.5 million, of which approximately \$20.0 million has been appropriated from the NWF. Therefore, the Public Law requires ^{that} the NRC collect approximately \$492.5 million in FY 1992 through Part 170 licensing and inspection fees and Part 171 annual fees. The NRC estimates that approximately \$90 million will be recovered in FY 1992 from the fees assessed under Part 170. The remaining \$402.5 million would be recovered through the FY 1992 Part 171 annual fees.

The Commission has not changed the basic approach, policies, and methodology for calculating the Part 170 professional hourly rate, the specific materials licensing and inspection fees in Part 170, and the Part 171 annual fees set forth in the final rule published ¹⁰ⁿ ~~in~~ July¹⁰ 1991 (56 FR 31472). The public was provided an opportunity to comment fully on the basic approach, policies, and methodology ^{used in the July 10, 1991, final rule} ~~in the proposed rule published April 12, 1991 (56 FR 14870) and~~ those comments were fully addressed by the Commission in its final rule ~~published July 10, 1991 (56 FR 31472)~~. That rule has been challenged in Federal court by several parties and those lawsuits are pending. Therefore, comments on this proposed rule are requested only on the issue of whether the Commission has properly applied the methodology adopted in FY 1991 to the FY 1992 budget authority. The

Commission will not consider comments on other issues as they are beyond the scope of this proposed limited rulemaking. Under this proposed rule, fees for most licenses will increase because^{-- 170} (1) NRC's budget has increased^{This has} resulting in an^{corresponding} increased professional hourly rate; and^{ed} (2) more than 2,000 licenses have requested that their license be terminated since the FY 1991 final rule was adopted^{This has} resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170.

A. Amendments to Part 170: Fees for Facilities Materials, Import and Export Licenses, and Other Regulatory Services.

The NRC proposes four amendments to Part 170. These amendments do not change the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, NRC proposes that the agency-wide professional hourly rate, which is used to determine the Part 170 fees, be increased from \$115 per hour to \$123 per hour (\$214,509 per direct FTE). The rate is based on the FY 1992 direct FTEs and the FY 1992

\$1.9 million to fuel facilities; and

\$1.9 million to other materials licenses.

In addition, approximately \$6.4 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower tier small entity fee of \$400 for certain licensees. In order for the Commission to recover 100 percent of its budget authority in accordance with the Public Law, the Commission will recover \$5.5 million of the \$6.4 million from operating power reactors and the remaining \$.9 million from large entities that are not reactors licensees.

This distribution results in an additional charge (surcharge) of approximately \$281,000 per operating power reactor; \$155,100 for each HEU, LEU, and UF_6 fuel facility; \$38,800 for each other fuel facilities and waste disposal licensees in Category 4A; \$1,600 for each materials licensee in a category that generates a significant amount of low level waste; and \$160 for other material licensees. 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 \$0.1 and \$2.5 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

Part 170

Section 170.3 Definitions.

The definition of a nonprofit educational institution is added ~~to provide clarification and~~ to more specifically identify those licensees that are exempt from fees under § 170.11(a)(4) of the Commission regulations. Many licensees have commented since the final rule was published that the NRC has not defined the term and that ~~it is unclear what~~ ^{the} criteria ~~are being~~ ^{are} used by the NRC to classify licensees as nonprofit educational institutions. (OAR not clear)

The NRC is proposing to define the term nonprofit educational institution as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Section 170.20 Average cost per professional staff hour.

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1992 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1992 for all fee categories that are based on full cost is \$123 per hour,

or \$214,509 per direct FTE. The rate is based on the FY 1992 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF and is calculated using the FY 1991 method as follows:

- IP* 1. All direct FTEs are identified in Table II by major program.

Table II
Allocation of Direct FTEs
by Major Program

Major Program	Number of direct FTEs ^{1/}
Reactor Safety & Safeguards Regulation	1070.4
Nuclear Safety Research . .	154.1
Nuclear Material & Low- Level Waste Safety & Safeguards Regulation . .	294.5
Special and Independent Reviews, Investigations, and Enforcement	71.0
Nuclear Material Management and Support	<u>23.0</u>
Total direct FTE	1613.0 ^{2/}

^{1/} Regional employees are counted in the office of the program each supports.

^{2/} In FY 1992, 1,613 FTEs of the total 3,261 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,648 FTEs will be considered overhead and general and administrative.

1P 2. NRC FY 1992 budgeted costs are allocated, in Table III, to the following four major categories:

- (a) Salaries and benefits.
- (b) Administrative support.
- (c) Travel.
- (d) Program support.

1P 3. Direct program support, the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

* 1P 4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rule published July 10, 1991 (56 FR 24872), and excluding direct Program Support funds, the remaining \$346.0 million allocated uniformly to the direct FTEs (1613) results in a rate of \$214,509 per FTE for FY 1992. The Direct FTE Hourly Rate is \$123 per hour (rounded to the nearest whole dollar). This rate is calculated

by the Commission in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule would be assessed at the FY 1992 rate shown in § 170.20.

The NRC continues to receive comments regarding the fees assessed for import and export licenses in accordance with § 170.21, Facility Category K. Based on experience in implementing these fees for the first time, the Commission is proposing to amend the existing fee categories in this section to provide for more equitable flat fees by expanding the number of fee categories.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991, rules as appropriate. ~~With respect to~~ ^{For} topical report applications currently on file ~~and~~ ^{and} which are still pending completion of the review ^e for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the

The definition of a nonprofit educational institution is added to provide clarification and to more specifically identify those licensees that are exempt from the annual fees under § 171.11(a). Many licensees have commented since the final rule was published that NRC has not defined the term and that ^{the} ~~it is~~ ~~unclear what criteria are being~~ used by the NRC to classify licensees as nonprofit educational institutions. ^{one not clear} The NRC is proposing to define the term nonprofit educational institution as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Section 171.11 Exemptions.

Paragraph (a) of this section would be amended to require that requests for exemption from the annual fees must be filed by the licensee within ninety (90) days from the effective date of the final rule establishing the annual fees. Based on the NRC's experience with the filing of exemption requests under the FY 1991 final rule, some time period must be established for the prompt filing of exemption requests. The Commission is, therefore, proposing to limit the filing of exemption requests

twofold. First, the FY 1992 budgeted amount attributable to materials licensees is about 20 percent higher than the FY 1991 ^{amount} level. Second, the number of licensees to be assessed annual fees in FY 1992 has decreased about 21 percent below the FY 1991 levels (from about 9,000 to about 7,000). The materials fees must be established at these levels in order to comply with Public Law 101-508 to recover 100 percent of the NRC's FY 1992 budget authority. A materials licensee may pay a reduced fee if it certifies on NRC Form 526 that it is a small entity.

To recover the \$5.0 million attributable to the transportation class of licensees, \$1.2 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs (\$3.8 million) for generic activities are allocated to holders of approved QA plans. The annual fee for approved QA plans is \$62,800 for users and fabricators and \$1,500 for users only.

The amount or range of the FY 1992 base annual fees for all material licensees is summarized as follows:

Materials Licenses
Base Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel	\$2.3 million
Part 70 - Low enriched fuel	\$715,000

Category of Costs

FY 1992
Budgeted Costs
(\$ In Millions)

- | | | |
|----|---|-------|
| 1. | Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities. | \$3.8 |
|----|---|-------|

Of the \$3.8 million budgeted costs shown above for LLW activities, 50 percent of the amount (\$1.9 million) would be allocated to fuel facilities included in Part 171 (19 facilities), as follows: \$155,100 per HEU, LEU, and UF₆ facility and \$38,800 for the other 9 fuel facilities. The remaining 50 percent (\$1.9 million) would be allocated to the material licensees in categories that generate low level waste (1,090 licensees) as follows: \$1,600 per materials licensee except for those in Categories 4A and 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the \$160 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for Categories 4A and 17, which also generate and/or dispose of low level waste, is \$38,800 for Category 4A and \$36,000 for Category 17.

Of the \$6.4 million not recovered from small entities, \$.9 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of \$160 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

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

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

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

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.3, the definition "nonprofit educational institution"^e is added to read as follows:

§ 170.3 Definition

* Nonprofit educational institution ^{means} is a public or non-profit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1992 budget is \$123 per hour.

4. In § 170.21, ^{the introductory paragraph and} Category K ^{are} is revised to read as follows:

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

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

Schedule of Facility Fees

(see footnotes at end of table)

Facility Categories and Type of Fees ^{1/ 2/}

Fees

K. Import and export licenses:

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

1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).

Application-new license \$8,000

Amendmen: \$8,000

2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-

TA 054

46
113
(8).

Application-new license \$4,900
Amendment \$4,900

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

Application-new license \$3,100
Amendment \$3,100

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

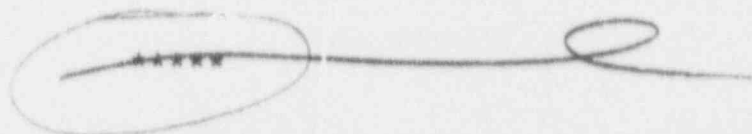
Application-new license \$1,200
Amendment \$1,200

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

Amendment \$120

1/ Fees will not be charged for orders issued by the Commission

application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991 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 rate established in \$ 170.20. In no event will the total review costs be less than twice the hourly rate shown in \$ 170.20.



5. 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.

for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.

- A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR Part 110.40(b).

Application-new license \$8,000
Amendment \$8,000

- B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR Part 110.41(a)(1)-(8).

Application-new license \$4,900
Amendment \$4,900

- C. Application for export of routine reloads of LEU reactor fuel requiring foreign government assurances only.

Application-new license \$3,100
Amendment \$3,100

1/Types of fees - Separate charges as shown in the schedule will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: 1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and 2) applications for licenses under Category 1E must be accompanied by an application fee of \$125,000.

(b) License/approval/review fees - Fees for applications for new licenses and approvals and for preapplication consultations and ~~fees~~ subject to full cost fees (~~fee~~ Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are

due upon notification by the Commission in accordance with § 170.12(b), (e) and (f).

(c) Renewal/reapproval fees - Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) Amendment fees -

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee

will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

^{2/}Fees will not be charged for orders issued by the Commission pursuant to 10 CFR ~~Part~~ 2.202 or for amendments resulting specifically from the requirements of such Commission orders. However, fees will be charged for approvals issued pursuant to 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 now or hereafter in effect) 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 and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991, 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 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/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 in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only. *

2/For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

6. The authority citation for Part 171 is revised to read as follows:

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

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841).

7. In § 171.5 the definition "nonprofit education institution" is added to read as follows:

§ 171.5 Definitions.

* * * * * means
Nonprofit educational institution is a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized

accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public

* * * * *

8. In § 171.11, paragraph (b) is revised to read as follows:

§ 171.11 Exemptions.

(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date would not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only the timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

authorized on the same license. \$13,200

Surcharge \$160

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

Surcharge \$160

4. Waste disposal and processing:

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

B. Approvals issued of 10 CFR Part 71
quality assurance programs.

Users and Fabricators	\$62,800
Users	\$1,500

Surcharge \$

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. \$118,000

Surcharge \$160

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^{7/} ✱

15. Import and Export licenses N/A^{8/} 7

\$38,800 has been added to fee categories 1.A.(2) and 4.A.; an additional charge of \$1,600 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of \$36,000 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of \$160 has been added to each fee Category, except Categories 10.A., 11., 12., 13.A., 14., 15., 16., 17., and 18. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the \$160 additional charge.

11. In Section 171.19, paragraph (b) and (c) are revised to read as follows:

§ 171.19 Payment.

(b) For FY 1992^e through FY 1995, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. All other licensees, or holders of a certificate, registration, and approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be

APPENDIX A TO THIS PROPOSED RULE
REGULATORY FLEXIBILITY ANALYSIS FOR THE
AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND
10 CFR PART 171 (ANNUAL FEES)

I. BACKGROUND

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC ~~on December 9, 1985 (50 FR 30241)~~ adopted size standards for determining which NRC licensees qualify as small entities. ^(50 FR 50241; December 2, 1985) These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

- (1) A small business is a business with annual receipts of \$3.5 million or less except private practice physicians for which

radioactive material (e.g., volume of patients).

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

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the RFA to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under 10 CFR Part 170. Therefore, the NRC rejected this approach.

For similar reasons, basing the fee on the frequency of use of the licensed radioactive source, the second suggested alternative would not necessarily reduce the cost for small entities that meet the size standards discussed earlier. Therefore, the NRC also rejected this approach.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modifying the proposed fees would apply only to small entities. Three basic options, each

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay either the smaller of the annual fee for the category or the maximum small entity fee. This alternative strikes a balance between the requirements of OBRA-90 and the RFA, which are to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities.

IV. MAXIMUM FEE

To implement Option 3, the NRC established a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on ^{what constitutes a significant economic} the amount or the percent of ^{impact on} gross receipts that should be charged to a small entity. To ^{a small entity} determine ^{to fulfill the requirements of OBRA-90} a maximum annual fee for a small entity, the NRC ^{Theoretically, the} examined the NRC 10 CFR Part 170 license and inspection fees ^{NRC has no} established in 1991 and the 1991 Agreement State fees for those ^{benchmark to} fee categories that are expected to have a substantial number of ^{assist in} small entities. Because these fees have been charged to small ^{determining} entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the July 10, 1991, final rule, that the existing materials license and inspection fees do not have a significant impact on small entities.

Part 1 - Memorandum to the EDO.

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

SUBJECT: INDUSTRIAL RADIOGRAPHY-TIME-OF-STORAGE SURVEYS
AND QUARTERLY PERFORMANCE AUDITS

Enclosed for your signature is a final rule to be published in the Federal Register that amends 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations." These amendments require that radiographers perform a new radiation survey of a device at any time it is placed in storage, change the requirement for making a record of the last use survey to recording of the new time-of-storage survey when it is the last storage survey in the workday, and clarify the regulations to more accurately reflect licensing practice which requires licensees to establish and describe an inspection system which includes safety performance inspections of all radiographers and radiographers' assistants at intervals not to exceed three months.

Background: On August 27, 1984, the EDO signed a proposed rule which was published in the Federal Register October 4, 1984 (49 FR 39168). The proposed rule was partly a response to a petition for rulemaking which recommended that NRC require an additional survey at any time a radiographic source is stored (PRM-34-3, Chicago Bridge and Iron Co.). This final rule will grant the petition and also respond to an NMSS request to clarify and codify the licensing requirement for quarterly inspections of radiographer performance. The amendments are intended to provide increased assurance that radiographic operations are performed according to NRC regulations, license conditions and licensee operating and emergency procedures. The staff believes these amendments will provide a significant improvement in radiographic safety and they are responsive to the Commissions' Policy and Planning Guidance.

Public Comments: The proposed rule was distributed to affected licensees, Agreement States, and other interested persons. The NRC received eighteen letters of public comment: eleven licensees; five Agreement States; one non-Agreement State; and one trade association. Nine commenters supported the time-of-storage survey and nine were opposed or offered suggestions for modification of this portion of the proposed rule. Thirteen letters opposed the quarterly performance audit provision on the grounds of cost while five supported the proposed requirement with some suggestions for change. A summary of the public comments with staff response is provided as Enclosure C.

Backfit Analysis: The Staff has determined that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

Notices: A notice to the Commission that the EDO has signed this rule is enclosed for inclusion in the next Daily Staff notes (Enclosures E). The appropriate Congressional Committees will be notified (Enclosure D). A copy of the final rule will be sent to all Industrial Radiography licensees with the instruction that no special license amendments are needed to comply with the new provisions. A copy of the Summary of Public Comments and Staff Response (Enclosure C) will be sent to all commenters and placed in the Public Document Room. A letter will be sent to the petitioner notifying him that the petition has, in effect, been granted.

Coordination: The Offices of Administration, Nuclear Material Safety and Safeguards, and Governmental and Public Affairs concur in these amendments. The Office of the General Counsel has no legal objection.

Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosures:

- A. Federal Register Notice of Final Rulemaking
- B. Regulatory Analysis
- C. Public Comments and Staff Response
- D. Congressional Letter
- E. Daily Staff Notes Item



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

APR 23 1992

OGC comments
Reply 4/8/92

please
add you

Concurrence

PDR

AE20-1

MEMORANDUM FOR: Robert M. Bernero, Director, NMSS
Harold R. Denton, Director, IP
Patricia G. Norry, Director, ADM
Trip Rothschild, Deputy Assistant
General Counsel for Legal Counsel
Special Projects and Legislation, OGC

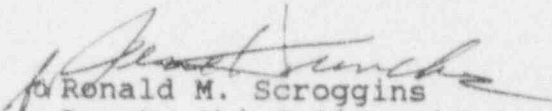
FROM: Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

SUBJECT: NOTICE OF PROPOSED RULEMAKING -- 10 CFR
PARTS 170 AND 171 -- 100% FEE RECOVERY FOR
FY 1992

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 1992.

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, Wednesday, April 8, 1992.

If you have any questions, please contact Jesse Funches on x27351 or Jim Holloway on x24301. Thank you for your continued cooperation on the NRC fee program.


Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure:
As stated

9208060111 1300

Commission will not consider comments on other issues as they are beyond the scope of this proposed limited rulemaking. Under this proposed rule, fees for most licenses will increase because (1) NRC's budget has increased, resulting in an increased professional hourly rate and (2) more than 2,000 licenses have requested that their license be terminated since the FY 1991 final rule was adopted resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170.

A. Amendments to Part 170: Fees for Facilities Materials, Import and Export Licenses, and Other Regulatory Services.

The NRC proposes four amendments to Part 170. These amendments do not change the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, NRC proposes that the agency-wide professional hourly rate, which is used to determine the Part 170 fees, be increased from \$115 per hour to \$123 per hour (\$214,509 per direct FTE). The rate is based on the FY 1992 direct FTEs and the FY 1992

\$1.9 million to fuel facilities; and

\$1.9 million to other materials licenses.

In addition, approximately \$6.4 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower tier small entity fee of \$400 for certain licensees. In order for the Commission to recover 100 percent of its budget authority in accordance with the Public Law, the Commission will recover \$5.5 million of the \$6.4 million from operating power reactors and the remaining \$.9 million from large entities that are not reactor licensees.

This distribution results in an additional charge (surcharge) of approximately \$281,000 per operating power reactor; \$155,100 for each HEU, LEU and UF₆ fuel facility; \$38,800 for each other fuel facilities and waste disposal licensees in Category 4A; \$1,600 for each materials licensee in a category that generates a significant amount of low level waste; and \$160 for other material licensees. 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 \$0.1^{million} and \$2.5 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

Part 170

Section 170.3 Definitions.

The definition of a nonprofit educational institution is added to provide clarification and to more specifically identify those licensees that are exempt from fees under § 170.11(a)(4) of the Commission regulations. Many licensees have commented since the final rule was published that the NRC has not defined the term and that it is unclear what criteria are being used by the NRC to classify licensees as nonprofit educational institutions. The NRC is proposing to define the term nonprofit educational institution as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Section 170.20 Average cost per professional staff hour.

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1992 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1992 for all fee categories that are based on full cost is \$123 per hour,

costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after August 9, 1991, will be assessed at the rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section would be modified to recover more completely FY 1992 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are increased by seven (7) percent across the board to reflect the increase in the professional hourly rate from \$115 per hour in FY 1991 to \$123 per hour in FY 1992. After application of the 7 percent increase to the flat materials fees, the amounts were rounded, as in FY 1991, by applying standard arithmetic rules 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 the nearest \$10.

For example, an industrial radiography licensee (Category

The definition of a nonprofit educational institution is added to provide clarification and to more specifically identify those licensees that are exempt from the annual fees under § 171.11(a). Many licensees have commented since the final rule was published that NRC has not defined the term and that it is unclear what criteria are being used by the NRC to classify licensees as nonprofit educational institutions. The NRC is proposing to define the term nonprofit educational institution as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Section 171.11 Exemptions.

Paragraph (a) of this section would be amended to require that requests for exemption from the annual fees must be filed by the licensee within ninety (90) days from the effective date of the final rule establishing the annual fees. Based on the NRC's experience with the filing of exemption requests under the FY 1991 final rule, some time period must be established for the prompt filing of exemption requests. The Commission is, therefore, proposing to limit the filing of exemption requests

these requests as quickly as possible but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the Commission~~s~~ is ~~proposing~~ proposing to exempt from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only licenses during the period October 1, 1991, through December 31, 1991. All other licensees and approval holders who held a license or approval on October 1, 1991, will be subject to the FY 1992 annual fees.

Section 171.15 Annual Fee: Reactor operating licenses.

The annual fees in this section would be revised to reflect the FY 1992 budgeted costs. Paragraphs (b)(3), (c)(2), (d), and (e) would be revised to comply with the requirement of the Public Law to recover approximately 100 percent of the NRC budget for FY 1992. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1992 programs and program elements. The resulting total base annual fee amount for power reactors is also shown. On the average, the power reactor base annual fees for FY 1992 have increased about 11 percent above the FY 1991 annual fees.

recover the FY 1992 generic costs totalling \$50.8 million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and material users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For the uranium recovery class of licenses, the NRC proposes that the current Category 2.A.(2) for Class I facilities be further divided into Class I and Class II facilities. Class II facilities are those solution mining licensees, primarily in-situ and heap leach facilities, ^{which} ~~who~~ do not generate uranium mill tailings. The NRC has ~~reexamined~~ reexamined the uniform allocation of costs to Class I facilities in the current rule to determine whether there is a significant difference between the regulatory services provided to operating in-situ facilities that do not generate mill tailings as compared to other licensees in Class I. Based on this reexamination, the NRC is proposing to divide the current Class I facilities into two classes to differentiate between those facilities that generate uranium mill tailings and those facilities that do not generate uranium mill tailings. The current uniform allocation of the costs results in a disproportionate allocation of costs to those licensees who do not generate uranium mill tailings.

For transportation, the costs are those budgeted for transportation research, licensing and inspection. ^{Same term} ~~Likewise~~ the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing and inspection.

<u>Category of Costs</u>	FY 1992 Budgeted Costs (\$ In Millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities.	\$3.8

Of the \$3.8 million budgeted costs shown above for LLW activities, 50 percent of the amount (\$1.9 million) would be allocated to fuel facilities included in Part 171 (19 facilities), as follows: \$155,100 per HEU, LEU and UF₆ facility and \$38,800 for the other 9 fuel facilities. The remaining 50 percent (\$1.9 million) would be allocated to the material licensees in categories that generate low level waste (1,090 licensees) as follows: \$1,600 per materials licensee except for those in Categories 4A and 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the \$160 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for Categories 4A and 17, which also generate and/or dispose of low level waste, is \$38,800 for Category 4A and \$36,000 for Category 17.

Of the \$6.4 million not recovered from small entities, \$.9 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of \$160 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

9. Device, product or sealed source safety evaluation:

A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. \$9,600

Surcharge \$160

B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices. \$4,600

Surcharge \$160

C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material,

impact of the fees for materials licensees by basing them on the licensee's nuclear capacity (e.g., the number of sources possessed, the number of hospital beds, or the amount of radioactive material possessed), or the frequency of use of the radioactive material. In adopting the July 10, 1991, final rule, the Commission recognized that inherent differences exist in the nuclear capacity and the frequency of source use for many of the classes of materials licensees. However, as indicated in Section III of this analysis, the Commission concludes that basing the fee on the number of sources, frequency of use, or amount of radioactive material possessed does not necessarily reduce the impact of the fees on small entities, which is the goal of the RFA. The Commission continues to believe that uniformly allocating the generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Consistent with this approach, the Commission will continue the \$1,800 maximum annual fee for small entities. In addition, the Commission proposes to create a lower tier annual fee for small entities with relatively small gross annual receipts or with a relatively small population.

To implement this proposal, relatively small annual receipts must first be defined. Based on data from an NRC survey of materials licensees and the Department of Commerce industry census, the following ~~chart~~^{table} shows the distribution of businesses nw

have resulted in an estimated cost of about \$5 million in the small entity subsidy. On the basis of the response to the FY 1991 billings, the NRC's estimate now is that there are about 2,000 small entities.

The following data show four different lower tier small entity fees, their impact on the licensees, and their impact on the balance between OBRA and RFA.

Lower Tier Small Entity Annual Fee	Reduction in Fee for Gauge Users (%)	Estimated FY 1992 Small Entity Subsidy (\$ M)	Estimated FY 1992 Annual Fees Paid by Small Entities (\$ M)
\$1,200	30%	\$5.0	\$4.5
900	50	5.3	4.2
700	60	5.5	4.0
400	75	6.0	3.5

Each of the alternative lower tier annual fees reduces the annual fee for qualifying nuclear gauge licensees. However, the Commission is establishing an annual fee of \$400 for the lower tier small entities because this amount should ensure that the lower tier small entities receive a reduction (75% for small gauge users) substantial enough to mitigate any severe impact. The amount of the small entity subsidy resulting from this fee would be equivalent to the amount estimated in the July 10, 1991, final rule, increased by 20 percent to account for the FY 1992 budget increase and the reduced number of materials licensees resulting from license terminations after the FY 1991 rule became effective. Although the other reduced fees would result in lower