



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

AF 83-1
PDR

MAR 13 1998

MEMORANDUM FOR: Glenda Jackson
Office of the Chief Financial Officer

FROM: David L. Meyer, Chief *DL Meyer*
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON DRAFT PROPOSED RULE
ENTITLED "REVISION OF FEE SCHEDULES; 100% FEE
RECOVERY, FY 1998"

The Rules and Directives Branch concurs on the draft proposed rule that would amend Parts 2, 140, 170 and 171. We have attached a copy of the package that presents our comments.

When the document is forwarded for publication, please include a 3.5 inch diskette that contains a copy of the document in WordPerfect as part of the transmittal package. The diskette will be forwarded to the Office of the Federal Register and the Government Printing Office for their use in typesetting the document.

In order to assist you in preparing the list of documents centrally relevant to this proposed rule that is required by NRC's regulatory history procedures, you should place the designator "AF83-1" in the upper right-hand corner of each document concerning the proposed rule that you forward to the Nuclear Document System.

If you have any questions, please contact Alice Katoski, 415-6862, or me on 415-7162.

Attachment: As stated

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171 *2, 140, 170 and 171*

RIN: 3150-AF 83

Revision of Fee Schedules; 100% Fee Recovery, FY 1998

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1998 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1998 is approximately \$454.8 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 NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90 requires that NRC collect the FY 1998 fees by September 30, 1998, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telephone 301-415-1678). Comments may also be submitted via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov. Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

The agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6057.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Proposed Action.
- III. Section-by-Section Analysis.
- IV. Environmental Impact: Categorical Exclusion.

10 CFR 170.12 provides that costs will be assessed for completed inspections. Currently, for fee recovery purposes, an inspection is considered to be completed when the inspection report is issued. The result is that costs expended after the report is sent are recovered through the annual fees imposed on all licensees in that class.

Activities that occur after the inspection report is issued are identifiable services for specific licensees. Therefore, NRC proposes to bill licensees for these services. However, in order to establish a clear interval during which accumulated costs would be billed, the proposed change to Part 170 would recover costs from the specific licensee for activities that occur within 30 days after the issuance of the inspection report. This change would result in recovery of 80 percent of these costs under Part 170, and would continue to provide applicants and licensees with a definitive point at which billing would cease.

Fourth, the NRC proposes to include additional methods of payment, such as Automated Clearing House and credit cards. Credit card payments would be accepted for small dollar, large volume payments.

In addition to the changes discussed above, the NRC is also announcing plans to bill for accumulated inspection costs prior to issuance of the inspection report under certain circumstances.

In summary, the NRC is proposing to:

- (1) Revise the two 10 CFR Part 170 hourly rates.
- (2) Revise the licensing (application and amendment) fees assessed under 10 CFR Part 170 to reflect the revised hourly rates.
- (3) Assess Part 170 fees to recover costs for all of the resident inspectors' official duty time and costs incurred within 30 days after issuance of an inspection report.
- (4) Offer additional payment methods.

In addition to the changes discussed above, the NRC is also announcing plans to bill for accumulated inspection costs prior to issuance of the inspection report under certain circumstances. Currently, as provided in 10 CFR 170.12(g), inspection costs are billed only after the inspection is completed, i.e., when the inspection report is issued. As a result, in some cases inspection costs accumulate over several billing cycles, and the licensee receives one bill for these accumulated costs rather than being billed as the costs are expended. However, NRC plans to in-progress bill for inspections in selected cases where it is determined that such billing would be in the best interest of the agency and the licensee. If it is determined that the accumulated costs warrant an exception to the billing method currently provided in 10 CFR 170.12(g), NRC will coordinate with the licensee to establish a mutually agreeable billing schedule and will issue a bill for inspection costs that have accumulated.

The NRC is developing a system that will accommodate routine billing for accumulated

NRC followed the same method as used in FY 1996. Because the amount to be recovered through fees for FY 1997 was identical to the amount to be recovered in FY 1996, establishing new baseline fees was not warranted for FY 1997. Based on a change in the distribution between Parts 170 and 171 fees, a reduction in the amount of the budget recovered for 10 CFR Part 170 fees, a reduction in other offsetting adjustments, and a reduction in the number of licensees paying annual fees, the FY 1997 annual fees for all licensees increased 8.4 percent compared to the FY 1996 annual fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

As indicated in the FY 1995 final rule, because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC intends to continue to stabilize annual fees by following the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

The NRC indicated in the FY 1995 rule that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments, as well as on the number of licensees paying the annual fees. The FY 1998 amount to be recovered through fees is approximately \$454.8 million, which is \$7.5 million less than in FY 1997. The estimated amount to be recovered in 10 CFR Part 170 fees is \$94.6 million, compared to \$95.2 million for FY 1997. Due largely to the adjustment for the reduced number of licensees paying annual fees, the 10 CFR Part 171 annual fees must increase slightly in FY 1998 compared to FY 1997 in order to recover 100 percent of the budget. The reduced number of licensees paying annual fees is primarily the result of the equivalent of 2.5 fewer power reactors subject to annual fees in FY 1998. In addition, for FY 1998 there is a reduction of approximately 200 transportation quality assurance approvals as a result of the rulemaking in 1997 that combined these approvals with the Part 34 radiography licenses. Table I shows the total budget and amounts of fees for FY 1997 and FY 1998.

The NRC is establishing the FY 1998 annual fees for all licensees at a level of 0.1 percent above the FY 1997 actual (prior to rounding) annual fees. Based on the small change, the rounded FY 1998 annual fees for many fee categories is the same as the final (rounded) FY 1997 annual fee. Therefore, for many licensees, the proposed annual fees for FY 1998 are the same as the FY 1997 annual fees.

TABLE II
Calculation of the Percentage Change to the FY 1997 Annual Fees
(Dollars in Millions)

| | <u>FY97</u> | <u>FY98</u> | <i>→ move over</i> |
|---|-------------|-------------|--------------------|
| Total Budget | \$473.3 | \$472.8 | |
| Less NWF | -11.0 | -15.0 | |
| Less General Fund (Hanford Tanks) Pilots for | <u>-3.5</u> | <u>-3.0</u> | |

assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all such requests before the end of the fiscal year on September 30, 1997. Similar situations existed after the FY 1991-1996 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fourth, §171.19 would be amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1998 either toward their total annual fee to be assessed or to make refunds, if necessary. §171.19(a) would also be amended to provide additional methods of payment, such as Automated Clearing House (ACH) and credit cards. Currently, payments may be made electronically by Fedwire (a funds transfer system operated by the Federal Reserve System) or by check. ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Offering additional electronic payment methods will not only expedite the payment process, but will also save licensees considerable time and money over a paper-based payment system. ACH offers several advantages over Fedwire, which most utilities currently use to pay NRC invoices. ACH is the least expensive of all electronic collection systems, one of the most secure networks in which to transmit payments, and is easy to use. Electronic funds transfer using ACH is quickly becoming the dominant, although not exclusive, method of conducting business with government agencies. Credit card payments would be accepted for small dollar, large volume payments.

The NRC will send a bill to reactors and major fuel cycle facilities for the amount of the annual fee upon publication of the FY 1998 final rule. For these licensees, payment will be due on the effective date of FY 1998 rule. Those material licensees whose license anniversary date during FY 1998 falls before the effective date of the final FY 1998 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those material licensees whose license anniversary date falls on or after the effective date of the final FY 1998 rule would be billed, at the FY 1998 revised rates, during the anniversary month of the license and payment would be due on the date of the invoice.

The proposed amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The proposed changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996-1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

In addition to the amendment to 10 CFR Parts 170 and 171, the NRC is proposing conforming amendments to 10 CFR Parts 2 and 140 to include the additional methods of payments provided in 10 CFR Parts 170 and 171.

III. Section-by-Section Analysis

The following analysis of those sections that would be amended by this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

→ Insert page 17 (parts 2 & 140 only) here

Section 170.12 Payment Fees

Paragraph (g) would be revised to indicate that costs incurred within 30 days after the inspection report is issued will be billed to the licenses.

The NRC is also proposing to revise this section to indicate that inspection fees will be assessed for each assigned resident inspector based on the number of hours the assigned resident inspector(s) is in an official duty status (i.e., excluding leave).

Paragraph (h) would be revised to provide additional methods of payment for fees assessed under 10 CFR 170 and to clarify that payment should be made in U.S. funds.

Section 170.20 Average cost per professional staff-hour.

This section would be amended to establish two professional staff-hour rates based on FY 1998 budgeted costs--one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1998 for all activities whose fees are based on full cost under §170.21 would be \$124 per hour, or \$219,901 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under §170.31 would be \$121 per hour, or \$214,185 per direct FTE. The rates are based on the FY 1998 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.
2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.
3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for general and administrative support are allocated to each program based on that program's salaries and benefits. This method results in the following costs which are included in the hourly rates.

Table I

FY 1998 Budget Authority to be Included in Hourly Rates
(Dollars in millions)

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columns*

| | <u>Reactor Program</u> | <u>Materials Program</u> |
|---|----------------------------|------------------------------|
| Direct Program | \$159.2 | |
| Salary and Benefits | \$155.3 | |
| <u>General and Administrative Support</u> | | |
| Program Travel and Other Support | | |
| Allocated Agency Management and Support | | |
| Subtotal | | |
| Less offsetting receipts | | |
| Total Budget Included in Hourly Rate | \$260.9 | \$57.3 |
| Program Direct FTEs | 1,186.4 | 267.3 |
| Rate per Direct FTE | \$219,901.0 | \$214,185.0 |
| Professional Hourly Rate (Rate per direct FTE divided by 1776 hours) | \$124.0 | \$121.0 |

Dividing the \$260.9 million budget for the reactor program by the number of reactor program direct FTEs (1,186.4) results in a rate for the reactor program of \$219,901 per FTE for FY 1998. Dividing the \$57.3 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (267.3) results in a rate of \$214,185 per FTE for FY 1998. The Direct FTE Hourly Rate for the reactor program would be \$124 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$219,901) by the number of productive hours in one year (1776 hours) as indicated in the revised OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program would be \$121 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$214,185) by the number of productive hours in one year (1776 hours).

The proposed FY 1998 rates are slightly lower than the FY 1997 rates. The decrease in the hourly rates is primarily the result of excluding surcharge costs from the hourly rate calculation in FY 1998. Previously, selected surcharge categories were excluded from the hourly rate calculation. Because of changes to the budget structure and in order to maintain consistency to the extent possible, the FY 1998 hourly rates have been calculated by excluding the costs for all activities included in the surcharge.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard

believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991 when 100 percent fee recovery was initiated. However, the possibility exists that the NRC might be unable to establish fees for a current fiscal year through the notice and comment process. Therefore, as a contingency plan for meeting the requirement of OBRA-90, the NRC is proposing to amend §171.13 to indicate that if the NRC is unable to promulgate a final fee rule within a current fiscal year, then fees would continue to be assessed at the same rates as the previous fiscal year. The NRC will continue to work diligently to publish the fee rules at the earliest possible time during the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section would be revised as described below. Paragraphs (b), (c) (1), (c)(2), (e) and (f) would be revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1998.

Paragraph (b) would be revised in its entirety to establish the FY 1998 annual fee for operating power reactors and to change fiscal year references from FY 1997 to FY 1998. Each operating power reactor would pay an annual fee of \$2,980,000 in FY 1998.

The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

Paragraph (e) would be revised to show the amount of the FY 1998 annual fee for nonpower (test and research) reactors. The 1998 proposed fee of \$57,300 is the same as the FY 1997 annual fee. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in §171.11(a)(2).

Paragraph (f) would be revised to change fiscal year date references.

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.

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$350,000 to \$5 million pay a maximum annual fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on the budget but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience.

Section 171.16(d) would be revised to establish the FY 1998 annual fees for materials

annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

Part 2

Section 2.205 Civil Penalties

Section 2.205(i) section would be revised to provide additional methods of payment, such as credit cards, and to clarify that payments are to be made in U.S. funds.

Part 140

Section 140.7 Fees

Section 140.7(a)(5) and (c) would be revised to delete references to payment instruction. A new Section 140.7(d) would be added to provide payment instructions, including clarification that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission and to provide additional methods of payments, such as credit cards.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of National Cable Television Association, Inc. v. United States, 415 U.S. 36 (1974) and Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered

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vitrification of waste at the Department of Energy Hanford, Washington site, and the pilot program pertaining to external regulation of the Department of Energy.

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in Florida Power and Light Company v. United States, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VII. 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 among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1998. The proposed rule results a slight increase in the annual fees charged to some licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1998.

VIII. Backfit Analysis

PT 2 Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear Materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and Disposal.

PT 140 Criminal penalties, Extraordinary nuclear occurrence, insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

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 proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

10 CFR Part 2...
10 CFR Part 140...

List of Subjects

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

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

Insert page 70 here

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, and conforming amendments to 10 CFR Parts 2 and 140. *?*

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, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. Section 170.12, paragraph (h) - is revised based as follows:

(h) Method of payment. License fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Where specific payment instructions are provided on the invoices to applicants and licensees for services rendered, payment should be made accordingly, e.g. invoice of \$5,000 or more should be paid via ACH through our Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. Unbilled application and amendment fees are to be paid in a similar manner using the above methods. Applicants and licensees should contact the License Fee and Accounts Receivable Branch at 301-415-7554 to obtain specific written instructions for making payments using ACH and credit cards.

3. Section 170.20 is revised to read as follows:

licenses are covered by fee Category 3D.

| | |
|---------------------------------|---------|
| Application - New license | \$6,800 |
| Amendment | \$630 |

- D. Licenses and approvals issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of
radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§32.72, 32.73, and/or 32.74 to nonprofit educational institutions whose processing

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(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.

(b) License/approval/review fees. Fees for applications for new licenses and approvals and for preapplication consultations and reviews 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 subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with §170.12(d).

(d) Amendment/Revision Fees.

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision 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 category or add a new fee category must be accompanied by the prescribed application fee for the new

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

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 THE NRC.

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

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 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); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

6. In §171.15, paragraphs (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§171.15 Annual Fees: Reactor operating licenses.

(b) The FY 1998 annual fee for each operating power reactor which must be collected by September 30, 1998, is \$2,980,000. This fee has been determined by adjusting the FY 1997 annual fee, (prior to rounding) upward by

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

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

(e) The activities comprising the FY 1995 surcharge are as follows:

(1) LLW disposal generic activities;

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

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

8. In §171.19, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided

the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

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Part 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND
ISSUANCE OF ORDERS

10. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.00-2.206 also issue under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83, Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 10, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239).

Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

11. In §2.205, paragraph (h) is revised to read as follows:

§2.205 Civil Penalties

(h) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by a court of the United States, following reference of the matter to the Attorney General for collection, payment of civil penalties imposed under Section 234 of the Act are to be made payable to the U.S. Nuclear Regulatory Commission, in U.S. funds, by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange.) Federal Agencies may also make payment by the On-Line Payment and Collections System (OPAC's). Where specific payment instructions are provided with the civil penalty notice, payment should be made accordingly, e.g. penalties of \$5,000 or more should be paid via ACH through our Lockbox Bank at the address indicated in the payment instructions provided as enclosure to the civil penalty. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided as enclosure to the civil penalty, to the Lockbox Bank designate for credit card payments.

PART 140 -- FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

12. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

13. In §140.7, paragraphs (a) and (c) are revised and paragraph (d) is added to read as follows:

§140.7 Fees

(a)(1) Each reactor licensee shall pay a fee to the Commission based on the following schedule:

(i) For indemnification from \$500 million to \$400 million inclusive, a fee of \$30 per year per thousand kilowatts of thermal capacity authorized in the license;

(ii) For indemnification from \$399 million to \$300 million inclusive, a fee of \$24 per year per thousand kilowatts of thermal capacity authorized in the license.

(iii) For indemnification from \$299 million to \$200 million inclusive, a fee of \$18 per year per thousand kilowatts of thermal capacity authorized in the license;

(iv) For indemnification from \$199 million to \$100 million inclusive, a fee of \$12 per year per thousand kilowatts of thermal capacity authorized in the license;


(2) No fee shall be less than \$100 per annum for any nuclear reactor. Such fee shall be due for the period beginning with the date on which the applicable indemnity agreement is effective. The various levels of indemnity fees are set forth in the schedule in this paragraph. The amount of indemnification for determining indemnity fees will be computed by subtracting from the statutory limit of liability the amount of financial protection required of the licensee. In the case of licensees subject to the provision of §140.11(a), this total amount shall be the amount as determined by the Commission, of the financial protection available to licensees at the close of the calendar year preceding the one in which the fee becomes due. For those instances in which a certified financial statement is provided as a guarantee of payment of deferred premiums in accordance with §140.21(e), a fee of \$1,000 or the indemnity fee, whichever is greater, shall be required.

(c) Each person licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant shall pay to the Commission a fee of \$5,000 per year for indemnification. This fee shall be due for the period beginning with the date on which the applicable indemnity agreement is effective.

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(d) Indemnity fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal Agencies may also make payments by the On-Line Payment and Collections System (OPAC's). Where specific payment instructions are provided on the invoices, payment schedule be made accordingly, e.g. invoices of \$5,000 or more should be paid via ACH through our Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

D Dated at Rockville, Maryland, this ____ day of _____, 1998.

For the Nuclear Regulatory Commission.

Sincerely, 

Jesse L. Funches,
Chief Financial Officer .
A

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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, as amended, (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 (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the

NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate \$1 million size standard for private practice physicians and applied a receipts-based size standard of \$5 million to this class of licensees. This mirrored the revised SBA standard of \$5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995, FY 1996 and FY 1997 fee rules and is continuing their use in this FY 1998 ^{proposed} rule. The small entity fee categories in §171.16(c) of this ~~final~~ rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at \$1,800 and a lower-tier small entity fee of \$400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of \$250,000 was raised to \$350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from \$3.5 million to \$5 million. The NRC believes that continuing these actions for FY 1998 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90),

requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA-90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was about \$445.3 million; for FY 1992, about \$492.5 million; for FY 1993 about \$518.9 million; for FY 1994 about \$513 million; for FY 1995 about \$503.6 million; for FY 1996 about \$462.3 million; for FY 1997 about \$462.3 million; and the amount to be collected for FY 1998 is approximately \$454.8 million.

To comply with OBRA-90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991), in FY 1992 (57 FR 32691; July 23, 1992), in FY 1993 (58 FR 38666; July 20, 1993), in FY 1994 (59 FR 36895; July 20, 1994), in FY 1995 (60 FR 32218; June 20, 1995), in FY 1996 (61 FR 16203; April 12, 1996), and in FY 1997 (62 FR 29194; ^{May 29, 1997}) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FYs 1991-1997.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other adjustments as well as an adjustment for the

Since FY 1991 when annual fees were first established approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the \$3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991), in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993), in the FY 1994 rule (59 FR 36895; July 20, 1994), in the FY 1995 rule (60 FR 32218; June 20, 1995), in the FY 1996 rule (61 FR 16203; April 12, 1996), and in the FY 1997 rule (62 FR 29194; May 29, 1997). The alternatives considered by the NRC can be summarized as follows.

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

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, meets the thresholds for being considered "major" under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1998. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1998 annual fees assessed under 10 CFR Part 171. The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC and became effective on May 11, 1995. The small entity size standards are found in 10 CFR 2.810 of the NRC's regulations. To comply with the RFA, the NRC has established two tiers of small entity fees. These fees are found in 10 CFR 171.16(c) of the fee regulations.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195-4514.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of its regulations in consultation with the Small

ATTACHMENT 1 TO APPENDIX A

U. S. Nuclear Regulatory Commission
Small Entity Compliance Guide
Fiscal Year 1998

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Business Administration. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, a small entity is:

1. Small business - a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;
2. Manufacturing industry - a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;
3. Small organization - a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;
4. Small governmental jurisdiction - a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;
5. Small educational institution - an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees¹

NRC Small Entity Fees

The NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

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

35 to 500 employees

\$1,800

Less than 35 employees

\$400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee. Approximately 800 licensees pay the small entity fee of \$1,800 while 600 licensees pay the lower-tier small entity fee of \$400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.
2. Complete all items on NRC Form 526 as follows:
 - a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.
 - b. The Standard Industrial Classification (SIC) Code should be entered if it is known.
 - c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.
 - d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

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