

Further, the NRC notes that, as required by OBRA-90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. As explained above, the NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, as statute controls fee allocation. This applies both to comments that more of the budget should be shifted from part 170 fees to part 171 as to the position advocating the reverse.

2. Annual Fees for Materials Users, Including Small Entities

Comment. Two nuclear density gauge users commented that their fees are too high, and create a significant financial burden on small business owners. One of these users indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that these activities are essential to support projects it designs and monitors. With respect to the NRC's upper fee level for small entities, this commenter stated that the broad revenue range encompassing \$350,000 to \$5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, they urge the NRC to consider adding more tiers for small businesses to reduce the license fee burden on smaller entities. The other commenter stated that license fees make it difficult for small projects to recover expenses, and requested smaller fees.

Response. The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fee every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, November 15, 1990, 104 Stat. 2838). Accordingly, as discussed in the FY 2003 proposed fee rule, this year the NRC re-examined the small entity fees, and determined that no change to the small entity fee is warranted for FY 2003. The NRC last revised its small entity fees in FY 2000 (65 FR 36936; June 12, 2000), when it increased the small entity annual fee and the lower tier small entity fee by 25 percent. For FY 2003, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the NRC costs associated with regulatory activities that benefit them.

The NRC has addressed comments regarding the impact of fees on industry in previous fee rulemakings. The NRC has stated since FY 1991, when the 100 percent fee recovery requirement was

first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA-90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for each class of license reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts that it is required to address by law.

Based on the provisions of the Regulatory Flexibility Act (RFA), the NRC provides reduced annual fees for licensees who qualify as small entities under the NRC's size standards. The materials users class has the most licensees who qualify for these reduced fees of any class. As such, the materials users class receives the largest amount of annual fee reductions of any class. About 24 percent of these licensees (approximately 1,200 licensees) have requested small entity certification in the past. The FY 2003 total estimated fee amount that will not be collected from licensees who pay reduced annual fees based on their small entity status is approximately \$4.5 million, which must be collected from other NRC licensees in the form of a surcharge. Further reductions in fees for materials users would create an additional fee burden on other licensees, thus raising fairness and equity concerns.

As stated in 10 CFR 2.810, the NRC uses the Small Business Administration's (SBA) definition of receipts. Based on the SBA definition, revenue from all sources, not solely receipts from NRC licensed activities, is considered in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards.

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid by other NRC licensees in order to comply with the

OBRA-90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA-90 and the RFA requirement that an agency must examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC does not plan to modify its small entity fee structure, nor provide any further reduction in annual fees beyond that already established for small entities. The NRC will re-examine the small entity fees again in FY 2005.

3. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received several comments regarding annual fees for uranium recovery licensees. These comments supported the reduction in annual fees for these facilities that resulted from the decision to rebaseline FY 2003 annual fees. One commenter also supported the continued implementation of last year's determination that the DOE must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. However, despite the proposed reductions, these commenters stated that there continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from such services. These commenters believe there is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort. The commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs.

Additionally, the commenters stated that the NRC has failed to adequately address the issue of decreasing numbers of uranium recovery licensees. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. These commenters urged NRC to continue its efforts to seek cost efficiencies through its annual reviews conducted as part of the budget process. One commenter stated that uranium recovery licensees continue to be