

For the Nuclear Regulatory Commission.

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**Appendix A to this Final 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 (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. The NRC proposed to adjust its 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 proposed to eliminate the separate \$1 million size standard for private practice physicians and to apply a receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC also proposed to establish 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 would be the standard applicable to the types of manufacturing industries that hold an NRC license. 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 NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of the final rule reflect the changes in the NRC's size standards. A new maximum small entity fee for manufacturing industries with 35 to 500 employees has been established at \$1,800 and a lower-tier small entity fee of \$400 established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of

\$250,000 has been 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 these actions 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 approximately \$445.3 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million; for FY 1994 about \$513 million and the amount to be collected in FY 1995 is approximately \$503.6 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) and in FY 1994 (59 FR 36895; July 20, 1994) 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 FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993, and FY 1994 rulemakings to establish the fees to be assessed for FY 1995 with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is using cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also (1) changing the method for allocating the budgeted costs (about \$56 million) that cause fairness and equity concerns; (2) eliminating the materials "flat" inspection fees in 10 CFR 170.31 and including the inspections with the annual fees in 10 CFR 171.16(d); and (3) establishing two professional hourly rates to better align the budgeted costs with the major classes of licensees. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1995 final rule.

**II. Impact on Small Entities.**

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee

rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 18 percent (approximately 1,300 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

- Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.
- Some firms would be forced to cancel their licenses. One commenter, with receipts of less than \$500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.
- Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.
- Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although