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) and in the FY 1994 rule (59 FR 36895; July 20, 1994). 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).
- —Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
- —Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts

that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be recovered from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of \$1,800 be continued.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1995 costs (\$27 million of the total \$33 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of \$1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, FY 1993, and FY 1994, the NRC is continuing the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of \$400 also applies to manufacturing concerns and educational institutions not State or publicly supported with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the Federal Register on April 17, 1992 (57 FR 13625) and would now

include manufacturing companies with a relatively small number of employees.

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA-90. This balance can be measured by: (1) The amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Based on this final rule, the amount of the FY 1995 small entity subsidy is lower than that for FY 1994. Thus, no change is being made.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-forprofit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this final rule except those noted in Section III, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991. FY 1992. FY 1993. and FY 1994 rules remain valid for this final rule for FY 1995.

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