

GROUP F

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RICHARD BURR
5TH DISTRICT, NORTH CAROLINA

COMMITTEE
COMMERCE

SUBCOMMITTEES
HEALTH AND THE ENVIRONMENT
ENERGY AND POWER
OVERSIGHT AND INVESTIGATIONS



Congress of the United States
House of Representatives
Washington, DC 20515-3305

April 10, 1998

The Honorable Shirley Ann Jackson
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairwoman Jackson:

I am writing to you to follow up on your testimony before the Committee on Commerce's Subcommittee Energy and Power, on March 25, 1998.

Due to a scheduling conflict, I was unable to offer any questions to you and your colleagues on the issue of reauthorization of the Nuclear Regulatory Commission (NRC) at the hearing. I would greatly appreciate it if you could take time from your schedule to offer some insight to one of the concerns I have with the NRC.

The NRC is currently conducting a review of 10 CFR 35 (Code of Federal Regulations), which will lead to revisions of the current regulatory requirements for nuclear medicine. On March 20, 1998, the Commission directed that the rule making process lead to regulatory oversight alternatives consistent with the lower overall risk of these procedures. The Commission also directed the staff to focus the new Part 35 on those procedures that pose the highest risk. The medical community, including the Society of Nuclear Medicine, believes that Diagnostic Nuclear Medicine procedures fall into that low risk category. The NRC has not undertaken any risk assessment at all, ignoring the documentation provided by the Society of Nuclear Medicine and the National Academy of Sciences-Institute of Medicine.

My specific questions are, has the NRC conducted any risk assessment to determine which procedures fall into the low risk versus high risk categories prior to developing and publishing a proposed rule? Secondly, why hasn't the Commission undertaken such activity prior to publishing a proposed rule?

I hope that the information I have provided is sufficient enough to answer these questions. If you need additional information, please feel free to contact my office immediately.

Again, I appreciate you taking time from your busy schedule to answer these questions. In the future if I can ever be of any assistance, please do not hesitate to contact my office.

Sincerely,

Richard Burr
Member of Congress

RB:bv

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(202) 226-0320

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(336) 831-5125
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PDR COMMS NRCC
CORRESPONDENCE PDR

PRINTED ON RECYCLED PAPER

EDO -- G980313

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ACTION

EDO Principal Correspondence Control

FROM: DUE: 05/21/98

EDO CONTROL: G980313
DOC DT: 04/10/98
FINAL REPLY:

Representative Richard Burr

TO:

Chairman Jackson

FOR SIGNATURE OF : ** PRI **

CRC NO: 98-0438

Chairman

DESC:

ROUTING:

REVISION TO 10 CFR PART 35 -- TRAINING AND
EXPERIENCE REQUIREMENTS WITH MEDICAL USE OF
RADIOISOTOPES

Callan
Thadani
Thompson
Norry
Blaha
Burns

DATE: 05/12/98

ASSIGNED TO: CONTACT:
NMSS Paperiello

SPECIAL INSTRUCTIONS OR REMARKS:

*Assign PCTH 1087
5/13/98*

JMN Action	
Due to NMSS Director's Office	
By	5/19/98 - Noon
	rec'd 5/12/98

*Note: This one, per SECY,
Cannot be duplicate
of the 6 others on this
subject as they ask
different questions.
Cathy*

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-98-0438 LOGGING DATE: May 11 98

ACTION OFFICE: EDO

AUTHOR: REP. RICHARD BURR
AFFILIATION: U.S. HOUSE OF REPRESENTATIVES

ADDRESSEE: CHAIRMAN JACKSON

LETTER DATE: Apr 10 98 FILE CODE: ID&R 14 PT. 35

SUBJECT: REVISIONS TO 10 CFR PART 35

ACTION: Signature of Chairman

DISTRIBUTION: CHAIRMAN, SECY/RAS, RF

SPECIAL HANDLING: OCA TO ACK

CONSTITUENT:

NOTES: RECEIVED IN SEC'' ON MAY 11, 1998

DATE DUE: May 26 98

SIGNATURE: DATE SIGNED:
AFFILIATION:

RICHARD BURR
6TH DISTRICT, NORTH CAROLINA

COMMITTEE
COMMERCE

SUBCOMMITTEES
HEALTH AND THE ENVIRONMENT
ENERGY AND POWER
OVERSIGHT AND INVESTIGATIONS



Congress of the United States
House of Representatives
Washington, DC 20515-3305

April 10, 1998

The Honorable Shirley Ann Jackson
United States Nuclear Regulatory Commission
Washington, D.C. 20555

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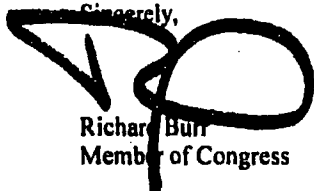
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Sincerely,



Richard Burr
Member of Congress

RB:bv

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62 16 96 MAY 11

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EDO -- G980313

**DIVISION OF INDUSTRIAL AND MEDICAL NUCLEAR SAFETY (IMNS)
ROUTING AND TRANSMITTAL SLIP**

January , 1998

NAME	INITIALS	DATE
D. Flack		
E. Kraus	E.K. Kraus	5/18
J. Piccone	J.P. Piccone	5/19
D. A. Cool	D.A. Cool	5/19/98
C. J. Paperiello		
H. L. Thompson		
L. J. Callan		

ACTION: _____ PREPARE REPLY: _____
 APPROVAL: _____ PER CONVERSATION
 SEE ME : _____ COORDINATION: _____

TICKET NO : 980313

DUE TO DIVISION: 5/18/98
 DUE TO NMSS: 5/19/98
 DUE TO EDO: 5/21/98

LETTER TO:
 The Honorable Richard Burr
 United States House of
 Representatives
 Washington, DC 20515-3305

ORIGINATOR: D. Flack
 SECRETARY: _____



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

October 31, 1996

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1996.

Public Law 104-46 appropriated \$473,300,000 to the NRC for fiscal year 1996, and Public Law 104-134 (Omnibus Consolidated Rescissions and Appropriations) enacted a rescission of \$714,000 for a total FY 1996 appropriation of \$472,586,000, of which \$11,000,000 was derived from the Nuclear Waste Fund. Of the remaining \$461,586,000, NRC collected 98 percent (\$454,049,125) through fees and other charges.

Sincerely,

Shirley Ann Jackson

cc: Senator Bob Graham

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

October 31, 1996

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1996. Public Law 104-46 appropriated \$473,300,000 to the NRC for fiscal year 1996, and Public Law 104-134 (Omnibus Consolidated Rescissions and Appropriations) enacted a rescission of \$714,000 for a total FY 1996 appropriation of \$472,586,000, of which \$11,000,000 was derived from the Nuclear Waste Fund. Of the remaining \$461,586,000, NRC collected 98 percent (\$454,049,125) through fees and other charges.

Sincerely,

Shirley Ann Jackson

cc: Representative Frank Pallone



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

October 31, 1996

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1996.

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Sincerely,

Shirley Ann Jackson

cc: Representative Tom Beville



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

October 31, 1996

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1996. Public Law 104-46 appropriated \$473,300,000 to the NRC for fiscal year 1996, and Public Law 104-134 (Omnibus Consolidated Rescissions and Appropriations) enacted a rescission of \$714,000 for a total FY 1996 appropriation of \$472,586,000, of which \$11,000,000 was derived from the Nuclear Waste Fund. Of the remaining \$461,586,000, NRC collected 98 percent (\$454,049,125) through fees and other charges.

Sincerely,

Shirley Ann Jackson

cc: Senator J Bennett Johnston



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

October 31, 1996

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1996. Public Law 104-46 appropriated \$473,300,000 to the NRC for fiscal year 1996, and Public Law 104-134 (Omnibus Consolidated Rescissions and Appropriations) enacted a rescission of \$714,000 for a total FY 1996 appropriation of \$472,586,000, of which \$11,000,000 was derived from the Nuclear Waste Fund. Of the remaining \$461,586,000 NRC collected 98 percent (\$454,049,125) through fees and other charges.

Sincerely,

Shirley Ann Jackson

cc Representative Martin Olav Sabo



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

October 31, 1996

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1996. Public Law 104-46 appropriated \$473,300,000 to the NRC for fiscal year 1996, and Public Law 104-134 (Omnibus Consolidated Rescissions and Appropriations) enacted a rescission of \$714,000 for a total FY 1996 appropriation of \$472,586,000, of which \$11,000,000 was derived from the Nuclear Waste Fund. Of the remaining \$461,586,000, NRC collected 98 percent (\$454,049,125) through fees and other charges.

Sincerely,

Shirley Ann Jackson

cc Senator J James Exon



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

June 16, 1998

Distribution:
LJCallan
AThadani
HThompson
PNorry
JBlaha
CPaperiello, NMSS
DFlack, NMSS
KCyr, OGC
G980313
EDO r/f

The Honorable Richard Burr
United States House of Representatives
Washington, D.C. 20515-3305

Dear Congressman Burr:

I am responding to your letter dated April 10, 1998, in which you expressed concerns about possible changes in the U.S. Nuclear Regulatory Commission's (NRC) 10 CFR Part 35, "Medical Use of Byproduct Material." In particular, you posed specific questions: "Has the NRC conducted any risk assessment to determine which procedures fall into low risk versus high risk categories prior to developing and publishing a proposed rule?" and "Why hasn't the Commission undertaken such activity prior to publishing a proposed rule?"

As a result of NRC's Strategic Assessment and Rebaselining efforts, the staff formed the Nuclear Byproduct Material Risk Review Group to develop a risk-informed, graded approach to regulating many material uses, including medical. The group's final recommendations are expected in the fall of 1998 and will be considered by the staff during the Part 35 rulemaking process. The Commission is currently in the rulemaking process to restructure Part 35 into a risk-informed, more performance-based regulation. In so doing, the Commission has drawn on the extensive assessments that have been conducted over the last few years, including a 1993 internal senior management review; the external review conducted by the National Academy of Sciences, Institute of Medicine; and the Commission's Strategic Assessment and Rebaselining process. On the basis of these assessments, the Commission directed the staff to proceed with rulemaking on an expedited basis and to provide increased opportunities for public input in the development process.

The program for revising Part 35 and the associated guidance has provided more opportunity for input from potentially affected parties (the medical community and the public) through formal Federal Register notices; facilitated public workshops; public meetings of the working and steering groups; meetings with medical professional societies and boards; and the public release via the Internet of draft regulatory language as a "strawman" for public comment. Over 200 comment letters have been received to date. The staff is reviewing information from all sources to become as informed on the risks of diagnostic and therapeutic procedures as possible. The draft proposed rule, which the Commission will be reviewing in June, has benefitted from these interactions and reflects numerous changes from the existing requirements. Such changes include a regulatory burden reduction for diagnostic uses including

Originated by: [DFlack, NMSS]

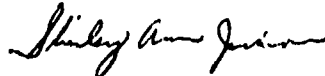
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- 2 -

requiring fewer license amendments and less prescriptive quality control requirements. After the Commission approves the proposed rule for comment, the staff will conduct additional public workshops to solicit input prior to finalizing the rule.

I trust this responds to your concerns. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson



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

October 29, 1998

The Honorable James M. Inhofe, Chairman
Subcommittee on Clear Air, Wetlands,
Private Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission (NRC) in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1998. Public Law 105-62 appropriated \$472.8 million to the NRC for fiscal year 1998. Of the funds appropriated to the NRC, \$15 million was derived from the Nuclear Waste Fund and \$3 million was appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies; both of which are excluded from license fee revenues.

In FY 1998, the total amount collected through fees and other charges was \$458.9 million. Of this total, \$454.8 million offsets our appropriation, bringing the net appropriation for FY 1998 to \$18 million. The remaining \$4.1 million will be used to reduce the total fees assessed in FY 1999.

Sincerely,

Shirley Ann Jackson

cc: Senator Bob Graham

9811060080 981029
PDR COMMS NRCC
CORRESPONDENCE PDR

F/4



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

October 29, 1998

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission (NRC) in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1998. Public Law 105-62 appropriated \$472.8 million to the NRC for fiscal year 1998. Of the funds appropriated to the NRC, \$15 million was derived from the Nuclear Waste Fund and \$3 million was appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies; both of which are excluded from license fee revenues.

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Sincerely,

Shirley Ann Jackson

cc: Representative Ralph Hall



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

October 29, 1998

The Honorable Joseph M. McDade, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission (NRC) in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1998. Public Law 105-62 appropriated \$472.8 million to the NRC for fiscal year 1998. Of the funds appropriated to the NRC, \$15 million was derived from the Nuclear Waste Fund and \$3 million was appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies; both of which are excluded from license fee revenues.

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Sincerely,

Shirley Ann Jackson

cc: Representative Vic Fazio



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

October 29, 1998

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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Sincerely,

Shirley Ann Jackson

cc: Senator Harry Reid



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

October 29, 1998

The Honorable Pete Domenici, Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires the Nuclear Regulatory Commission (NRC) in each of the fiscal years 1991 through 1998 to collect fees and annual charges that approximate 100 percent of its budget authority, less the amount appropriated to the NRC from the Nuclear Waste Fund. Consistent with past practice, we are providing you the status of fee collection activities for FY 1998. Public Law 105-62 appropriated \$472.8 million to the NRC for fiscal year 1998. Of the funds appropriated to the NRC, \$15 million was derived from the Nuclear Waste Fund and \$3 million was appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies; both of which are excluded from license fee revenues.

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Sincerely,

Shirley Ann Jackson

cc: Senator Frank Lautenberg



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

October 29, 1998

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Sincerely,

Shirley Ann Jackson

cc: Representative John Spratt, Jr.



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

June 5, 1999

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission (NRC) recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1999 by assessing license and annual fees. For FY 1999, the NRC must collect approximately \$449.6 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The final amendments to 10 CFR Part 170 will continue the Commission's initiatives to more appropriately recover costs for additional activities through 10 CFR Part 170 license and inspection fees rather than through 10 CFR Part 171 annual fees. The final amendments will also revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171 will establish the amount of the FY 1999 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees consistent with the Commission's 1995 commitment (60 FR 32225) to reestablish annual fees if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. This will result in the FY 1999 annual fees decreasing for operating reactors and certain other licensees based on reduced budgeted costs for those classes of licensees. However, the annual fees will increase for some classes of licensees due to increased budgeted costs for those classes and decreases in the number of licensees in those classes.

For certain classes of licensees, the annual fee increases will be significant. Therefore, the Commission presented in the proposed rule two optional annual fee methods for FY 1999 public comment: 1) establish the annual fees without a cap on fee increases; or 2) establish the annual fees with a cap so that no licensee's annual fee increases more than 50 percent from FY 1998. The comments received on the proposed rule did not provide overwhelming support for establishing annual fees with a cap. The Commission has decided to establish the 1999 fees without a cap on fee increases. While the NRC is sensitive to the effects the reestablished annual fees will have on those licensees with significant increases, establishing new annual fees without a cap on the increase results in a fair and equitable allocation of costs among licensees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

7704140340 770405
FOR COMMISSION NRC
CORRESPONDENCE FOR

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* 6/11/99
* 6/11/99

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-2-

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication. The final rule will become effective 60 days after publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

June 5, 1999

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission (NRC) recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1999 by assessing license and annual fees. For FY 1999, the NRC must collect approximately \$449.6 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The final amendments to 10 CFR Part 170 will continue the Commission's initiatives to more appropriately recover costs for additional activities through 10 CFR Part 170 license and inspection fees rather than through 10 CFR Part 171 annual fees. The final amendments will also revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171 will establish the amount of the FY 1999 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees consistent with the Commission's 1995 commitment (60 FR 32225) to reestablish annual fees if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. This will result in the FY 1999 annual fees decreasing for operating reactors and certain other licensees based on reduced budgeted costs for those classes of licensees. However, the annual fees will increase for some classes of licensees due to increased budgeted costs for those classes and decreases in the number of licensees in those classes.

For certain classes of licensees, the annual fee increases will be significant. Therefore, the Commission presented in the proposed rule two optional annual fee methods for FY 1999 public comment: 1) establish the annual fees without a cap on fee increases; or 2) establish the annual fees with a cap so that no licensee's annual fee increases more than 50 percent from FY 1998. The comments received on the proposed rule did not provide overwhelming support for establishing annual fees with a cap. The Commission has decided to establish the 1999 fees without a cap on fee increases. While the NRC is sensitive to the effects the reestablished annual fees will have on those licensees with significant increases, establishing new annual fees without a cap on the increase results in a fair and equitable allocation of costs among licensees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

-2-

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Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Representative Ralph M. Hall



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

June 5, 1999

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission (NRC) recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1999 by assessing license and annual fees. For FY 1999, the NRC must collect approximately \$449.6 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The final amendments to 10 CFR Part 170 will continue the Commission's initiatives to more appropriately recover costs for additional activities through 10 CFR Part 170 license and inspection fees rather than through 10 CFR Part 171 annual fees. The final amendments will also revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171 will establish the amount of the FY 1999 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees consistent with the Commission's 1995 commitment (60 FR 32225) to reestablish annual fees if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. This will result in the FY 1999 annual fees decreasing for operating reactors and certain other licensees based on reduced budgeted costs for those classes of licensees. However, the annual fees will increase for some classes of licensees due to increased budgeted costs for those classes and decreases in the number of licensees in those classes.

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Shirley Ann Jackson

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Senator Harry Reid



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

June 5, 1999

The Honorable Ron Packard, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission (NRC) recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1999 by assessing license and annual fees. For FY 1999, the NRC must collect approximately \$449.6 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The final amendments to 10 CFR Part 170 will continue the Commission's initiatives to more appropriately recover costs for additional activities through 10 CFR Part 170 license and inspection fees rather than through 10 CFR Part 171 annual fees. The final amendments will also revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

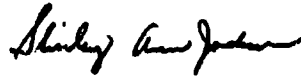
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Shirley Ann Jackson

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Representative Peter J. Visclosky



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

June 5, 1999

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission (NRC) recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1999 by assessing license and annual fees. For FY 1999, the NRC must collect approximately \$449.6 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The final amendments to 10 CFR Part 170 will continue the Commission's initiatives to more appropriately recover costs for additional activities through 10 CFR Part 170 license and inspection fees rather than through 10 CFR Part 171 annual fees. The final amendments will also revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

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Shirley Ann Jackson

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Representative John M. Spratt, Jr.



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

June 5, 1999

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission (NRC) recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1999 by assessing license and annual fees. For FY 1999, the NRC must collect approximately \$449.6 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The final amendments to 10 CFR Part 170 will continue the Commission's initiatives to more appropriately recover costs for additional activities through 10 CFR Part 170 license and inspection fees rather than through 10 CFR Part 171 annual fees. The final amendments will also revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171 will establish the amount of the FY 1999 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees consistent with the Commission's 1995 commitment (60 FR 32225) to reestablish annual fees if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. This will result in the FY 1999 annual fees decreasing for operating reactors and certain other licensees based on reduced budgeted costs for those classes of licensees. However, the annual fees will increase for some classes of licensees due to increased budgeted costs for those classes and decreases in the number of licensees in those classes.

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Shirley Ann Jackson

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Senator Frank R. Lautenberg

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1999, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1999 is approximately \$449.6 million.

EFFECTIVE DATE: (60 days after publication in the Federal Register.)

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PDR COMPS NRCC
CORRESPONDENCE PDR

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 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. Responses to Comments.
- III. Final Action.
- IV. Voluntary Consensus Standards.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.
- IX. Backfit Analysis.
- X. Small Business Regulatory Enforcement Fairness Act.

I. Background

OBRA-90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE)

administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy were excluded from the fee recovery requirement for FY 1999 by the FY 1999 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established at 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees. The NRC published a proposed rule that presented the amendments to Parts 170 and 171 necessary to comply with OBRA-90 for FY 1999 on April 1, 1999 (64 FR 15876).

II. Responses to Comments

A total of thirty-four comments were received on the proposed rule. Although the comment period ended on May 3, 1999, the NRC evaluated the 26 comments which were received by the close of business on May 5, 1999. The NRC was unable to consider the eight comments received after May 5, 1999, as they were not received in sufficient time for the NRC staff and the Commission to evaluate them fully in the limited period available for preparing a final rule in this expedited rulemaking proceeding. In any event, a cursory review of those late comments did not reveal any substantive new issues.

Many of the comments were similar. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

A. Legal Issues.

Several commenters raised questions about NRC's legal interpretation of OBRA-90 and the IOAA. These comments are addressed first because their resolution establishes the framework for addressing subsequent issues raised by commenters.

The commenters attempted to present a balanced view of the proposed fee schedule, and even applauded the NRC's "considerable effort over the past year to reduce inefficiencies through strategic planning and reorganizations." Nonetheless, it is abundantly clear that most commenters believe that the NRC has a long way to go to reach a truly fair and equitable system of fee allocation. Several commenters asserted that the NRC lacks the legal authority to set fees in accordance with the proposed fee schedule. These commenters challenged the agency's interpretation of the statutes underpinning NRC's fee collection proposal. These same questions have been raised since the inception of the 100 percent fee collection requirement in 1991. The Commission has consistently interpreted its statutory mandate, but in the face of continuing complaints, the Commission will again address the concerns raised by commenters.

1. Comment. Comments submitted by or on behalf of commercial nuclear power reactors, the uranium recovery industry, and a materials licensee expressed serious

concern over inequities caused by the statutory mandate that NRC collect an annual charge from licensees aggregating approximately 100 percent of the budget authority for the fiscal year, less fees collected under Part 170 and any amount appropriated from the Nuclear Waste Fund or the General Fund. These commenters are particularly distressed at having to absorb charges in their annual fees for activities that do not directly benefit them, such as international activities, Agreement State oversight and regulatory support, activities for other Federal agencies, and fee reductions or exemptions for small entities and nonprofit educational institutions. One commenter, speaking on behalf of several commercial power reactors, questioned the NRC's legal and constitutional authority to impose these charges. The commenter did not believe the 100 percent budget recovery requirement could be reconciled with OBRA-90, which requires that annual fees bear a reasonable relationship to the cost of regulatory services and to be fairly and equitably allocated among licensees.

Commenters concluded that the desired relief for this problem can come only by legislative changes to OBRA-90 to relax the 100 percent budget recovery requirement so that certain costs can be removed from the fee base. They remained hopeful that the desired relief may be forthcoming in spite of their awareness that the Administration has not supported such a relaxation. In some cases, however, commenters perceived that the NRC has alternatives it is not using, such as charging Agreement States for services provided. In addition, they insisted that the NRC should recover these types of costs through General Funds appropriations from the Congress. In their view, when all else fails, the NRC must simply discontinue the "unfunded" program rather than pass along these costs to the licensees. These commenters asserted that this becomes particularly necessary in today's era of utility deregulation because reactor licensees' ability to pass through costs to their customers has been reduced.

liquid. USEC argues that the risk is less, and that the Effort Factor for UF6 should be reduced

One commenter maintained that the NRC has the authority to charge other Federal agencies Part 170 fees. Another commenter went so far as to say that the NRC is not at liberty to relieve anyone from paying fees for associated services, i.e., to grant exemptions from user fees because, under OBRA-90, Congress directed NRC to recover its costs by collecting fees from "any person who receives a service or thing of value." This commenter maintained that there was no exemption authority for this requirement, relying on the definition of "person" under the Atomic Energy Act to argue not only that the NRC has authority to impose charges for these types of activities, but also that it is compelled to charge the recipients for them. Thus, it would have the NRC recover Agreement State oversight and support costs through fees assessed on the Agreement States or their licensees. The commenter also stated that costs of international activities should be recovered through fees imposed on the Department of State; that other Federal agency licensing and inspection charges should be assessed against the regulated Federal agency; that small entities and nonprofit educational institutions should not be relieved of fees for the costs associated with them; and that either a General Fund appropriation should be sought to recover those expenses or they should pay their own costs. Other commenters also advocated these proposals.

In support of these arguments, commenters charged that OBRA-90 does not permit charging licensees for programs not directly related to the licensees charged, that the surcharge imposed to recover these costs is unlawful, unfair, arbitrary, and discriminatory. These commenters charged that OBRA-90 is unconstitutional in that it denies reactor licensees equal protection under the due process clause of the Constitution and constitutes an unfair taking of property without just compensation. They believed, uniformly, that the surcharge bears no relation to services or benefits to the licensees against whom it is assessed and that these costs should be recovered from the beneficiaries. Commenters cited the reduced ability

of reactor licensees to pass through costs to their ultimate customers in an era of utility deregulation and reasserted their view that power reactor licensees should only be assessed for programs of direct relevance to them.

Response. OBRA-90 requires that the sum total of annual charges NRC collects from its licensees equal approximately 100 percent of NRC total budget authority for each fiscal year, less fees assessed under the IOAA and amounts appropriated to NRC from the Nuclear Waste Fund. The NRC is expected to establish a schedule of annual charges that fairly and equitably allocates this amount among licensees and reasonably reflects the costs of providing services to licensees or classes of licensees, to the maximum extent practicable. This means that the NRC must promulgate each fiscal year a fee schedule that is as fair and equitable as can be achieved, given the other constraints with which it is faced. The NRC does not have discretion to assess less than this amount, as several commenters suggested. The costs of services that do not directly benefit licensees must be recovered under our current statutory mandate.

In the Statement of Considerations for the 1991 final fee rule the Commission concluded that the Congressional intent behind the requirement to collect "approximately 100 percent" of its budget was for the NRC to identify and allocate as close as possible to 100 percent of its budget authority to the various classes of NRC licensees. The NRC has historically interpreted this requirement as referring to the inherent uncertainties in estimating and collecting fees, such that additional fees would not need to be collected in case of shortfall, nor refunds necessarily made in case of over collection. (See 56 FR 31472, 31473; July 10, 1991).

Moreover, the Conference Report for OBRA-90 specifically acknowledged the fact that there would be certain "expenses that cannot be attributed either to an individual licensee or a class of licensees." The NRC is expected to

fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributable to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

H.R. Conf. Rep. No. 101-964, at 963, reprinted in 1990 U.S.C.C.A.N. 2374, 2668. Thus, Congress has directed that licensees, of necessity, will have to pay for some of the expenses that are not generated by efforts directly on their behalf, regrettable as that may be. While every effort is made to impose such costs equitably, there is one controlling requirement which is inflexible: the NRC must set its schedule so that it can recoup approximately 100 percent of its budget authority, less the amounts it properly may recover from other areas, such as charges for services (IOAA fees) and Nuclear Waste Fund Appropriations. In order to meet that mandate, the NRC has been forced to assess fees to licensees to recover the costs of certain types of activities that, while not necessarily directly benefitting the licensees charged, leave no other means to be recovered. This includes functions such as services provided to other Federal agencies, Agreement State oversight and international activities. It is understandable that licensees who absorb the impact of these charges will object to them and wish to be relieved of them. However, their arguments overlook an important qualifier in the standard: namely, "to the maximum extent practicable." That is, when Congress enacted this admittedly rigorous requirement, it was aware of the fact that there would be certain costs that

would not be susceptible to recovery as others were. The Congress still has not relieved the NRC from the onus of the collection requirement. Certain expenses cannot be attributed to an individual licensee or class of licensees but may be recovered from licensees who can fairly, equitably, and practicably contribute to payment.

The NRC can readily explain why these costs are spread to agency licensees as part of a fee "surcharge." The NRC lacks the legal authority to assess IOAA charges against Federal agencies (other than the Tennessee Valley Authority). The IOAA states, in pertinent part, "[E]ach service or thing of value provided by an agency . . . to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible." A "person on official business of the United States Government" has long been construed to mean a Federal agency. This construction indicates that the NRC requires separate Congressional authorization in order to override this provision and lawfully impose fees on other Federal agencies. For example, in light of this language, section 161w. of the Atomic Energy Act was enacted in 1972 to allow the NRC to impose Part 170 fees on the Tennessee Valley Authority. Section 161w. was further amended in 1992 to include the United States Enrichment Corporation, prior to its privatization. Had the NRC's statutory mandate included the authority to impose fees on all Federal agencies, this legislation would have been unnecessary. The NRC believes it should be granted the authority to charge other Federal agencies for services rendered and recently submitted to Congress, as a provision in its proposed FY 2000 authorization bill, an amendment to section 161w. which would provide the authority to impose Part 170 fees on all Federal agencies.

Similarly, the NRC lacks the authority to impose annual fees on the Agreement States and their licensees because OBRA-90 permits the assessment of annual fees only on NRC licensees. The Agreement States and their licensees are not "NRC licensees." The NRC also

has made policy decisions not to assess fees on nonprofit educational institutions in order to further the public good and to limit the fees assessed on small businesses in accordance with the policies underlying the Regulatory Flexibility Act. Under the circumstances, it is understandable that a substantial portion of these costs are recovered through annual fees imposed on power reactors. A large percentage of the NRC's budget is devoted to the regulation of power reactors. Accordingly, a large portion of the annual fee must be borne by these licensees.

The commenters suggested that, in the absence of such legislation, the NRC should not perform the activities encompassed within the annual fee surcharge. The Commission is not prepared to eliminate these important functions that help assure the public health and safety and the common defense and security without a clear statutory directive from the Congress. Thus, a legislative solution to the fee recovery requirement is required to eliminate the concerns raised by the commenters. Over the years, the NRC has had limited success in obtaining fee legislation that would reduce the burdens on its licensees by having some or all of NRC expenses in these areas obtained through appropriations from the General Fund.

While the Commission continues to support legislative relief, absent such relief the Commission has limited ability to remedy any inequities in its fee structure because it is required to collect approximately 100 percent of its budget in fees. The NRC has taken several actions within existing fee laws to address concerns regarding its fee structure:

1. The NRC identified fairness and equity concern categories in its February 1994 Report to Congress on NRC Fee Policy and indicated that legislation was necessary to address these concerns. The recommended legislation has not been enacted.

2. In FY 1995, the NRC acted under existing fee laws to help to mitigate the fairness and equity concerns by treating costs for activities that do not directly benefit NRC licensees similar to overhead and distributing the costs to the broadest base of NRC licensees.

3. The NRC established a policy to obtain reimbursement for services provided to other Federal agencies when such reimbursements are authorized by law.

4. The NRC obtained appropriation legislation that removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy.

5. The NRC took actions to shift cost recovery for certain activities from Part 171 annual fees to Part 170 specific fees for services.

6. As part of its FY 2000 authorization bill, the NRC is seeking an amendment to section 161w. of the Atomic Energy Act to provide the authority to impose Part 170 fees on all other Federal agencies.

In sum, the Commission believes that the fee schedules it is promulgating in this final rule satisfy all legal requirements and do not deprive any licensee of its constitutional rights.

2. Comment. One commenter said that the basis for annual fees for operating reactors should be megawatt generation capability instead of the proposed fixed flat annual fee. This commenter argued that the proposed fee structure placed a disproportionate burden on

the ratepayers of utilities with small reactors and resulted in a competitive disadvantage to those reactors.

Response. OBRA-90 requires that annual fees have a reasonable relationship to the expenditure of Commission resources. No available data demonstrates that the Commission expends fewer resources on reactors with lower generation capacity than it does on facilities with greater generation capability. Furthermore, Commission services are not allocated on the basis of megawatt generation capability. Because there is no relationship between generic costs and generation capacity, there is no legal basis for charging annual fees based on megawatt generation capability.

3. **Comment.** One commenter said that the NRC should designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The NRC should then refund the higher fees collected for the last two years from all 8(a) firms. The commenter further requested that the NRC change its definition of small entity for environmental remediation service companies to conform to the SBA's revised size standards, which now categorize such companies with fewer than 500 employees as "small entities."

Response. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than \$5 million in average annual gross revenues over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or

fewer employees during the preceding 12-month period would qualify as small entities (10 CFR 2.810). The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry.

The Commission will further consider the issue raised by this commenter regarding its designation of small entities for reduced fee purposes, and will separately address the commenter's request for a partial annual fee exemption.

4. Comment. A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1999. One commenter stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived at its proposed fee schedules.

Response. The NRC believes it has provided sufficient information concerning its proposed fee schedule to allow effective evaluation and constructive comment on the proposed rule. In Part II of the Statement of Considerations supporting the proposed rule, the NRC provided a detailed explanation of the FY 1999 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC work papers pertinent to the development

of the fees to be assessed were placed in the Public Document Room (PDR) on April 1, 1999, on the first day of the public comment period. These work papers provide additional information concerning the development and calculation of the fees, including NRC's FY 1999 budgeted resources at the subactivity level for the agency's major programs. The NRC has also made NUREG-1100, Vol.14, "Budget Estimates, Fiscal Year 1999" (Feb. 1998), which discusses in detail NRC's budget for FY 1999 available in the PDR. In addition, NRC staff always makes itself available either to meet with interested parties in person, or to respond to telephone inquiries to explain its fee schedules.

B. Specific Comments - Part 170.

1. Expand the scope of Part 170.

Comment. The NRC received twelve comments on the proposal to expand the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals, and full cost recovery for time expended by Project Managers (PMs), except leave time and time spent on generic activities such as rulemaking.

Many of those commenting on this issue opposed full cost recovery for PMs. Several uranium recovery licensees commented that, coupled with the proposed increase in the hourly rate to be assessed for NRC staff review time, the proposed change could double Part 170 fee assessments, an increase that would be extremely burdensome to licensees. One commenter indicated that billing for all of a PM's time would reduce necessary communication, such as phone calls, between the NRC and the licensees. This commenter also objected to licensees

being required to pay for the time a PM spends to become familiar with a site. A similar comment was received from a reactor licensee who, although not specifically indicating opposition to the proposal, stated that Part 170 fees should not be assessed for PM or resident inspector time spent in training or other administrative tasks not directly associated with the licensee. One commenter indicated that the licensees paying for the PM time have little or no input over what the PM is reviewing. A power reactor commenter supported full cost recovery for PMs only if work priorities were mutually agreed upon by NRC and the licensee.

Several of the uranium recovery commenters also questioned the amount of time spent by PMs and other NRC staff in reviewing licensee submittals. They indicated that, in many cases, the amount of time spent on uranium recovery issues appears to be excessive in light of what they characterize as the low level of risk posed by uranium recovery operations. One uranium recovery commenter stated that the proposal presents the potential for an open-ended escalation of fees that do not directly benefit the licensees.

Other commenters partially or fully supported the proposed expansion of Part 170. The Nuclear Energy Institute (NEI), which primarily represents the commercial nuclear reactor industry, urged the NRC to continue to separate out fees related to a given licensee and assess those fees to the licensee under Part 170. NEI stated that it is inappropriate for one licensee to subsidize, through annual fees, additional agency oversight incurred by another licensee because it is not performing well. Another commenter who supported the proposal recommended that the NRC demonstrate how the expanded Part 170 costs are removed from the Part 171 fee schedule. One power reactor commenter agreed, in part, with shifting cost recovery from annual fees to fees for services. However, the commenter stated, that as more services are billed by the hour, the opportunity for inefficiencies in reviews and billing abuse

DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this \$3.2 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is

becomes greater. This commenter suggested that hourly fees be capped to allow licensees to make budget forecasts.

Another commenter supported the assessment of Part 170 fees for all inspections, stating that the change is expected to lower the costs of inspections for good performers. However, this commenter opposed the proposal to expand Part 170 to include reviews of documents that do not require formal approval. This commenter stated that these documents are submitted in compliance with regulations without an expectation of NRC assistance in assuring compliance, and that licensees should have control over Part 170 charges.

A materials licensee questioned how the proposed additional Part 170 fees would be billed, indicating that if NRC has truly downsized, the expanded scope of Part 170 is not justified.

Response. The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for Project Manager time, except leave time and time spent on generic activities such as rulemaking. Expanding the scope of Part 170 is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in

complying with statutory obligations under the Commission's regulations. Incident investigations, performance assessments and evaluations, reviews of reports and other documents, and PM activities are services which the NRC provides to specific, identifiable recipients. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in the class.

Based on the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget authority through fees, the costs of these services must be paid either by applicants and licensees under Part 170 as fees for services rendered to them or by licensees under Part 171 as annual fees. To calculate the total amount to be assessed in Part 171 annual fees, the estimated amount to be recovered through Part 170 fees in a given fiscal year is subtracted from the total budget authority for that fiscal year. Therefore, if all other things remain equal, increasing the costs to be recovered under Part 170 would shift these costs away from Part 171 annual fees. Although this change may result in increased Part 170 fees assessed to the individual licensees receiving the specific services, the overall fee burden for licensees in that fee class is not increased. It should be noted that because this final rule will become effective after the last quarterly Part 170 billing in FY 1999, the changes will not have an effect on the estimated Part 170 collections for FY 1999 and thus do not affect the FY 1999 annual fees.

As described in the proposed rule, this change will result in the assessment of Part 170 fees to individual licensees to recover the full costs for PMs assigned to their sites, except for PM activities that are of a generic nature, such as rulemaking and preparation of generic guidance documents, and leave time. If a PM is assigned multiple sites, the PM's time that is

not site-specific will be prorated to all of the sites to which he or she is assigned. The NRC acknowledges some commenters' concerns about individual licensees being charged for the time a PM is in training or performing administrative tasks and time for a newly-appointed PM to become familiar with a particular site. However, these types of activities are necessary for the PMs to provide effective oversight for the operation of an assigned site or sites. Therefore, the cost of these activities should be borne by those licensees receiving the benefit of PM services, whether the services are specific licensing and inspection actions, or other duties associated with serving as the agency focal point for oversight of a site or sites. Examples of PM activities that will be billed to the specific site or sites include: discussions with NRC regional employees on specific plant issues; visits to the site(s); scheduling, planning and coordinating work with the technical staff; and answering technical questions.

The NRC disagrees with the suggestion that PM time should be billed only if the work priorities are mutually agreed upon by NRC and the licensee. It would be inappropriate to have entities regulated by the NRC concur in how the agency carries out its regulatory functions related to that specific entity. The agency's work priorities, including those of PMs, are carefully reviewed by NRC management to assure that the appropriate resources are spent to accomplish the agency's health and safety mission. Assessing Part 170 fees to recover the cost of a particular service provided to an individual applicant or licensee does not diminish the requirement for NRC management to carefully balance workload and assigned resources in an efficient and effective manner. This also applies to the suggestions that the NRC staff spends excessive time on reviews and that increasing the scope of Part 170, as proposed, would open the door for inefficiencies in reviews and billing abuses.

The NRC is committed to performing all of its activities as expeditiously and efficiently as possible. This commitment is evidenced by the streamlining and downsizing the agency has accomplished and the resulting budget reductions. In addition, billing for activities under Part 170 provides licensees a greater opportunity to review and challenge specific costs because the charges are individually itemized on the Part 170 bills.

Part 170 fees for these additional activities will be applicable only to those applicants and licensees subject to full cost billing under Part 170. Those materials licensees who hold licenses for which amendment and inspection fees have been eliminated from Part 170 will not be subject to Part 170 fees for these additional activities as they are included in their Part 171 annual fees.

2. Including Orders and Escalated Enforcement Actions in Part 170 in FY 2000.

The NRC solicited public comment on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule.

Comment. Four comments were received on this issue. Two commenters opposed adding these activities to Part 170; one commenter supported their inclusion. The fourth commenter indicated that the direct allocation of these costs to those who receive the services warrants further evaluation and that it would welcome the opportunity to comment on a definitive proposal in the FY 2000 fee rule. This commenter stated that, in addition to being viewed as a penalty upon licensees who exercise their rights to challenge the NRC action, there

are additional implications in situations where the licensee is successful in such a challenge. Another commenter stated that the assessment of Part 170 fees for these actions would result in a "de facto additional civil penalty, and further challenge the economics of operation for that facility." NEI, on the other hand, urged the NRC to continue to assess fees under Part 170 for activities related to a given licensee, and stated that "application of this principle dictates that the industry support assessing fees for escalated enforcement actions under Part 170." NEI went on to say that the perception that these enforcement actions serve as an industry-wide deterrent has not been borne out. One commenter who opposed the assessment of Part 170 fees for these activities stated that the licensees would have to pay fees for pursuing any enforcement action they disagreed with, which could result in a "chilling effect" on challenges to enforcement actions. The commenter also stated that licensees would be required to pay for the review of a violation and corrective actions even if the NRC concludes that full mitigation of a possible civil penalty is appropriate, and potentially would be charged fees when NRC withdraws an enforcement action.

Response. The NRC agrees that there are arguments for and against assessing Part 170 fees for the development of, and evaluation of response to, orders and NOVs accompanying escalated enforcement actions. This issue will be further evaluated prior to promulgation of the FY 2000 fee rule.

3. Eliminate Part 170 Average-cost ("Flat") Amendment Fees.

Comment. The NRC received one comment on its proposal to eliminate the Part 170 fees that are based on the average costs to review amendments ("flat" fees). The

commenter supported the proposed change, stating that it simplifies budgeting and increases efficiency for both the NRC and licensees.

Response. The NRC is amending 10 CFR 170.31 to eliminate the flat amendment fees for materials licensees. This change streamlines the NRC process and eliminates any delays in processing these amendments due to incorrect payments. The NRC believes that, as the commenter indicated, this change will also be more efficient for licensees. This change will result in an estimated \$900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

4. Hourly Rates.

Comment. The NRC received eight comments that specifically addressed the proposed increases in the professional hourly rates. Those commenting indicated that the increases would create a substantial financial burden for the licensees, particularly when added to the proposal to expand the scope of Part 170. Several commenters stated that the proposed hourly rates exceed the hourly charges of senior consultants or principals at major consulting firms, and exceed the generally accepted rate for similar work in private industry. Some commenters stated that the rate is unjustifiably high and does not reflect the actual cost of providing regulatory services to licensees. One commenter said that the increase does not coincide with actual cost of living increases. This commenter stated that the increases cannot be justified based on inflation indicators over the period which have increased on the order of 3 percent or less per year. Uranium recovery commenters stated that the hourly charges should be predictable to permit licensees to budget and plan accordingly. An individual uranium recovery licensee and The National Mining Association (NMA), whose members include owners

and operators of uranium mills, mill tailings sites and in situ uranium production facilities, added that, to the extent such hourly rates are a result of the 100 percent budget recovery requirement of OBRA-90, the NRC should work with Congress to make the fee system more equitable. One commenter suggested that support staff be reduced parallel with FTE reductions and questioned whether materials program support staff could be shared with other programs to lessen what the commenter termed the "support imbalance and consequent licensee load."

Response. As stated in the proposed rule, due to a budget coding error that occurred in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates plus salary and benefit increases since that time. The FY 1997 hourly rate for the reactor program was \$131, and the FY 1997 hourly rate for the nuclear materials and nuclear waste program was \$125. The NRC salaries and benefits increased 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999. Considering only these increases, the FY 1999 hourly rates would be \$142 for the reactor program and \$136 for the materials program. However, there has also been a shift in the proportion of direct resources between the reactor program and the materials program. As a result, the materials program has a larger share of the direct resources than in the past and consequently must absorb more of the overhead and management and support costs. The professional hourly rates are based on budgeted costs. Because overhead resources are budgeted separately for the materials and reactor programs, they cannot be "shared" for purposes of the hourly rate calculations as suggested by one commenter. Agency management and support costs, on the other hand, are not budgeted separately for the reactor and materials programs. Instead, these costs are allocated to the programs based on their share of the budgeted direct resources. Because the materials program now has a larger share of the direct resources than in the past, more of the management and support costs have been allocated to the materials program.

As indicated in previous final rules, the NRC professional hourly rates must be established at levels to meet the statutory requirement of OBRA-90 to recover through fees approximately 100 percent of the budget authority, less the appropriation from the Nuclear Waste Fund. The NRC is not able to use inflation or other indices as the basis for the development of the hourly rates charged under 10 CFR 170 and 171 because these factors may not allow the NRC to meet the 100 percent fee recovery requirement.

Given the budgeted costs that must be recovered through the hourly rates, it is necessary to increase the FY 1999 hourly rates to \$141 for the reactor program and \$140 for the materials program. The method and budgeted costs used in the calculation of the hourly rates are discussed in Section III of this final rule. In addition, the agency work papers supporting each proposed and final rule include details of the hourly rate calculations. These work papers also contain details of the agency's budget used in the development of the FY 1999 hourly rates and fees. The work papers supporting the fee rules are available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC 20555-001. The specific details regarding the NRC's FY 1999 budget are documented in the NUREG-1100, Vol. 14, "Budget Estimates, Fiscal Year 1999" (February 1998). Copies of NUREG-1100 may be purchased from the Reproduction and Distribution Services Section, OCIO, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and from the National Technical Information Service, Springfield, VA 22161-0002. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room.

5. Fee Adjustments.

Comment. Five comments were received on the proposed fee adjustments to the fee schedules for specific classes of licensees set forth in §§170.21 and 170.31. NEI specifically commented on the NRC's proposal to revise §§170.21 and 170.31 to reflect the increased hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. NEI questioned the statement in the proposed rule that the average number of professional hours required to conduct inspections and to review and approve new license applications increased for 20 of 33 fee categories. NEI stated that license applications have become more uniform and inspection frequency is expected to decline as a result of implementation of the NRC's new risk-informed, performance-based regulatory philosophy. Four other commenters expressed opposition to the increased fees for materials licensees, which include increases in Part 170 fees for certain categories. These commenters indicated that the proposed changes would have adverse affects on licensees. A manufacturer of portable density and moisture testing gauges stated that economic hardship on licensees will lead to the sale and disposal or abandonment of gauges and subsequent license termination. The commenter stated that use of a valuable tool will be diminished as a result of the fee increases and referred to the low cost of regulating this category of radioactive materials devices, the low activity of material in the devices, and the safety record of these devices. Other commenters indicated that the increases were unjustified, pointing to the safety record of devices covered by fee category 3P (all other byproduct material) and the time span between inspections for these types of licenses. One commenter stated that, in light of NRC's efforts to streamline its licensing, inspection and enforcement programs, costs should be reduced commensurate with a reduction in resources and activity.

Response. The results of the biennial review of fees were based on actual staff hours reported for the various license categories over a 5-year period. During the 5-year period,

almost 700 new license applications and almost 4000 amendment requests were processed for fee category 3P, "All other byproduct material", and approximately 2300 inspections were conducted. Similar numbers of actions were reported for nuclear medicine licenses. Although fewer actions were reported for certain other categories, the volume of data is sufficient to support the increases in the average time spent on these categories. Based on the volume analyzed in the biennial review, the NRC has no basis to modify the average time results for processing these applications and inspections. The NRC is streamlining its licensing and inspection efforts and is working on a series of guidance documents related to about 20 categories of materials licenses. Because these initiatives are still under development, the full efficiencies have yet to be realized. Based on the requirement for NRC to recover approximately 100 percent of its budget authority through fees each fiscal year and the requirement to biennially review and revise charges to recover the costs of providing the services, the NRC is unable to establish fees based on cost reductions that may occur in future fiscal years. Part 170 fees must approximate current costs. The NRC is adopting the results of the biennial review in this final rule for those fee categories subject to flat fees based on the average professional time to complete the actions. These revised flat fees also reflect the increased hourly rates for FY 1999.

C. Specific Comments - Part 171.

1. Rebaseline with a 50 percent cap.

Comment. Nine commenters specifically addressed the two options presented by the NRC for rebaselining the FY 1999 annual fees: Option A, rebaseline without a cap, or Option B, rebaseline with a 50 percent cap on FY 1999 annual fee increases. Five commenters, uranium

recovery licensees or persons representing the uranium recovery class, preferred the 50 percent cap, "if forced to choose." These commenters indicated that the cap would at least spread the annual fee increases for uranium recovery licensees over two years to lessen the drastic impact to their budgets for a given year. One uranium recovery commenter indicated that even the 50 percent increase is excessive when governmental inflation indexes indicate an inflation rate of 3 percent or less. The National Mining Association (NMA) stated that the uranium recovery licensees had no warning of how significant the increase in fees would be for FY 1999. Another commenter, a materials licensee, supported the cap, but stated that 50 percent was too high. This commenter recommended that all fee increases be capped at a level commensurate with the inflation rate. Three commenters, NEI, a reactor licensee, and a materials licensee, supported rebaselining without a cap. These commenters stated that rebaselining without a cap is more fair because it allows NRC to determine the amount of resources devoted to regulation of certain licensees and allocate the costs to those licensees. One commenter stated that the cap could result in an unfair allocation to some licensees of costs over the cap amount incurred for other licensees. NEI stated that it is inappropriate given the developing competitive environment in which nuclear licensees will operate or are already operating, to require all licensees to subsidize any licensee who received services costing more than the cap amount.

Response. The Commission is establishing rebaselined FY 1999 annual fees without a cap, after comparing the allocation of its FY 1999 budgeted costs with those of FY 1995. The Commission concluded that there have been significant changes in the allocation of agency resources among the various classes of NRC licensees. This fulfills the Commission's policy commitment made in the Statement of Considerations accompanying the FY 1995 fee rule (60 FR 32225) that base annual fees would be re-established (rebaselined) if there is a substantial

change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with significant fee increases, establishing new baseline annual fees without a cap results in a fair and equitable allocation of costs among licensees.

The major purpose for the option to establish the FY 1999 rebaselined annual fees with a 50 percent cap was to provide greater fee stability than would be provided by rebaselining without a cap, and to provide advance notice to licensees of the full annual fees for their future budget planning purposes. There was, however, a lack of overwhelming support for the cap. Some commenters who chose the cap were in fact reluctant to support either option. Capping fee increases for a class or classes of licensees necessarily results in additional fees being assessed to other classes of licensees in order to recover approximately 100 percent of the budget as required by statute. A cap on FY 1999 fee increases has the potential to exacerbate concerns about the fairness and equity of licensees being charged for activities that do not directly benefit them. Based on these concerns, an evaluation of NRC budget allocation data, and the lack of overwhelming support from commenters, the Commission has decided against adopting a cap on fee increases for FY 1999.

2. Rebaselining frequency.

Comment. Eight comments were received in response to the NRC's solicitation of public comment on whether the NRC should, in future years, continue to use the percent change method and rebaseline fees every several years, as established in the FY 1995 fee rule statements of consideration, or return to a policy of rebaselining annual fees every year. Five commenters were in favor of rebaselining every several years, three were in favor of

believes is necessary to ensure maximum agency efficiency. In a similar comment, Duke Energy Corporation (Duke) stated it believes that annual rebaselining would enable the NRC to better monitor its programs and ensure that costs are accurately assessed to licensees who benefit from the associated services and would ensure that licensees would not unjustly subsidize the costs of services provided to other licensees. The NMA and several uranium recovery licensees commented that the fees should only be rebaselined every several years so that the fees remain reasonably predictable from year to year. These commenters stated that a reasonable degree of predictability of the fees is needed to enable licensees to plan, forecast, and budget accurately. The United States Enrichment Corporation (USEC) also supported rebaselining every several years as appropriate, such as when there is significant downsizing, agency reorganization, or additions of new fee classes. USEC stated that although rebaselining provides for a more in-depth review of the NRC's programmatic efforts, it also has the potential to reintroduce into the fee process an instability that the percentage change method was created to address. USEC referred to the methodology for stabilizing fees described by the NRC in the FY 1996 fee rule, stating that consistent and appropriate application of that methodology should result in rebaselining when warranted, but not necessarily annually. USEC stated that the methodology will result in a fair allocation of fees while maintaining some stabilization and fee predictability.

Response. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years as warranted. The current policy of adjusting the annual fees only by the percent change in NRC's total budget unless there is a substantial

change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees provides for fee stabilization, which is a continuing issue of concern for licensees as evidenced by the comments received. The commenters did not provide overwhelming support for reversing the current policy. Therefore, the Commission is continuing the policy as described in the Statement of Considerations for the FY 1995 final fee rule (60 FR 32218; June 20, 1995) to stabilize fees by adjusting the annual fees only by the percent change in NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The Commission stated in the FY 1995 rule that the percent change method would be used for a maximum of four years. Annual fees for FYs 1996, 1997, and 1998 were established based on the percent change method. The Commission determined that it is appropriate to establish new baseline fees for FY 1999 based on the program and fee policy changes that have taken place since FY 1995, and the addition of a new fee class for spent fuel storage/reactor decommissioning. Based on the experience gained as a result of applying the criteria for rebaselining over the past four years, the Commission has determined that in the future annual fees should be rebaselined every three years, or earlier if warranted. The decision on the appropriate method for establishing annual fees for the intervening two years will be made each year.

3. Spent fuel storage/reactor decommissioning annual fee.

Comment. Four comments were received on NRC's proposal to establish a spent fuel/storage decommissioning annual fee to be assessed to all reactor licensees,

regardless of their operating status, and to Part 72 licensees who do not hold a Part 50 license. Duke supported the proposed change, stating that the current fee regulation would impose duplicative fees on licensees for use of a Part 72 general license if they already perform the same activities under a specific Part 72 license. Duke contends that imposition of such substantial and duplicative fees is inconsistent with Congress' direction in the Nuclear Waste Policy Act of 1982, as amended, that NRC eliminate the need for specific NRC authorization for onsite storage of spent fuel to the maximum extent practicable. Duke stated that the duplicate annual fees for both types of licenses would deny licensees the reasonable opportunity to use the general licenses, and supports the removal of such disincentive by revising the fee regulations as proposed. South Carolina Electric and Gas Company objected to the proposed fee because it does not maintain an Independent Spent Fuel Storage Installation (ISFSI), has adequate storage capacity in its Spent Fuel Pool (SFP), and does not plan to build an ISFSI for at least 15 years. The commenter stated that, under the proposal, it would pay fees for continuing to store spent fuel in the SFP until an ISFSI is needed, but would not realize services or benefits for those fees. The commenter stated that it is not appropriate for its customers to pay the ISFSI fees of other licensees and, had DOE honored its obligation to take possession of spent fuel by January 1998, the fee would not be an issue. Two other commenters, reactor licensees who have permanently ceased operations, opposed the imposition of the proposed fee for their licenses because they have no fuel onsite. These commenters argued that because they have no fuel onsite they derive no benefit from NRC activities related to spent fuel storage. GE Nuclear stated that its Vallecitos Boiling Water Reactor (VBWR) derives no comparable benefit from the NRC's decommissioning activities because essentially all of the facilities, structures, and systems, external to the containment vessel associated with VBWR operations have been removed, leaving a very small containment structure and internal

components subject to future decommissioning. PECO Energy Company (PECO) stated that the Peach Bottom Atomic Power Station Unit 1 (PBAPS) spent fuel pool has been off-loaded, drained, and decontaminated. PECO stated that it plans to keep PBAPS Unit 1 in a SAFSTOR and the only activity being performed is required Technical Specifications Surveillance through December 2015.

Response. The NRC is establishing a spent fuel storage/reactor decommissioning annual fee in this final rule. However, this new annual fee will not be assessed to those reactors that have permanently ceased operations and have no spent fuel onsite. The NRC agrees with the commenters that NRC's generic spent fuel storage activities are not applicable to reactors that have ceased operations and have removed all fuel from the site. However, the new fee will be assessed to all reactors who have fuel onsite regardless of the storage option the licensee elects to use. The NRC recognizes that sites will be required to continue to store spent fuel onsite until another solution becomes available. The fact that DOE has not taken possession of the spent fuel does not relieve NRC of the OBRA-90 requirement to recover approximately 100 percent of its budget authority through fees, including those costs associated with generic spent fuel storage activities. The NRC believes that assessing a spent fuel storage/reactor decommissioning annual fee to all reactor licensees who have spent fuel onsite and all Part 72 licensees who do not hold a Part 50 license is a reasonable approach for recovering NRC costs for generic spent fuel storage and reactor decommissioning activities. The current policy has raised concerns that the fee structure could create a disincentive for licensees to pursue dry storage. The spent fuel storage/reactor decommissioning annual fee will give equivalent fee treatment to both storage options. The annual fee also addresses concerns about the fairness of assessing multiple annual fees if a licensee holds multiple Part

72 licenses for different designs. Further, the annual fee will result in most reactor licensees being assessed the costs of NRC's generic reactor decommissioning activities. This annual fee includes the costs of NRC's generic and other research activities directly related to reactor decommissioning and spent fuel storage (both storage options), and other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except those activities which are subject Part 170 fees. The final FY 1999 spent fuel storage/reactor decommissioning annual fee is \$206,000. This reflects that an annual fee is not being imposed on those six reactors which have permanently ceased operations and have no fuel onsite. This also takes into account the prorated FY 1999 annual fee to be assessed to DOE for the Part 72 license issued on March 19, 1999, for the storage of fuel and fuel debris resulting from the Three Mile Island Unit 2 accident.

4. Revised Fuel Cycle Matrix.

Comment. USEC, although supportive of the decreased FY 1999 annual fees for the Paducah, Kentucky and Portsmouth, Ohio Gaseous Diffusion Plants (GDPs), requested that the NRC revise the fee rule to recognize that the GDPs are the operational equivalent of a single plant and assess a single fee for the complex. USEC argued that a double assessment on the two certificates of compliance results in a significantly disproportionate allocation of costs to USEC. USEC also requested that NRC revise the Effort Factor rating in the fuel facility matrix used by NRC to assess relative effort for a facility. Specifically, USEC took issue with NRC's matrix evaluation of the relative weight and, hence, NRC's regulatory effort for GDP activities. USEC stated that NRC counted the risk for UF₆ twice, once as solid and once as

liquid. USEC argues that the risk is less, and that the Effort Factor for UF6 should be reduced from 10 to 5 for the GDPs.

Response. The NRC has rejected previous requests from USEC that a single fee be assessed for the two GDPs. For the reasons stated in response to USEC's comments on the proposed FYs 1997 and 1998 fee rules (62 FR 29197; May 29, 1997, and 63 FR 31843; June 10, 1998), and in NRC's March 23, 1998, denial of USEC's annual fee exemption request, the NRC believes that USEC must pay a full annual fee for each of its enrichment facilities. USEC has recently appealed the FY 1998 annual fee assessments for the two GDPs. Because USEC raised these same specific issues in its current exemption request, we will address those issues in our forthcoming response to the exemption request. In the fuel facility matrix, the NRC assessed the risk based on the total relative amounts of UF6 and the number and complexity of the processes involved with UF6. These factors merit weighting the value as 10 for the GDPs when compared to other fuel cycle facilities.

D. Other Comments.

1. Inconsistency in Hourly Rate and Annual Fee Calculation Tables.

Comment. One commenter stated that there is an inconsistency in the proposed rule between the table showing the calculation of the professional hourly rates and the table showing the amount to be recovered through annual fees. Specifically, the commenter stated that Table I, "Budget and Fee Recovery Amounts for FY 1999", indicates that \$103.5 million is expected to be recovered through Part 170 fees in FY 1999, while Table II, "FY 1999 Budget

Authority to be Included in Hourly Rates" indicates that \$257.4 million is to be recovered through Part 170 fees in FY 1999.

Response. The amounts shown in Tables I and II are correct. In the proposed rule, Table I, "Budget and Fee Recovery Amounts for FY 1999," shows that the estimated amount for recovery under Part 170 totals \$103.5 million. Table II, "FY 1999 Budget Authority to be Included in Hourly Rates," shows that the total budgeted costs for the reactor program excluding direct contract support, plus the management and support costs allocated to the reactor program, totals \$257.4 million. This sum, which is used to develop the reactor program hourly rate, is recovered through the imposition of fees under both Parts 170 and Parts 171.

2. Adverse Effects of Fee Increases.

Comment. Many commenters opposed the fee increases in general, indicating that the increases are not justified and would have adverse economic impacts on NRC licensees. Several commenters expressed concerns that with the decline in the number of licensees, the remaining licensees are required to pay a greater share of NRC's costs with no increase in benefits. Some commenters stated that NRC's budget should be reduced in a manner that is consistent with the reduction in the number of licensees. Others specifically requested that the NRC consider options to address the effects of increased license fees and a declining number of licensees. Commenters also indicated that there should be a reduction in NRC costs as the agency moves towards a performance-based regulatory structure, translating to lower fees. Although some commenters recognized NRC's efforts to downsize and streamline its programs, they indicated that the NRC should find ways to further streamline

and operate more efficiently. Some commenters requested that the increased fees be reconsidered based on the low risk and safety records associated with the licensed activities. NEI cited several reasons why the NRC should consider decreasing its future budget requests, including: NRC's revised oversight process which should result in decreased inspection hours; a declining number of industry events that should lead to fewer inspections; and the NRC's revised enforcement process which should require fewer agency resources. NEI also suggested that the NRC consider additional changes to its organizational structure, such as eliminating the regional offices and reducing the resources related to research activities.

Response. The NRC's budget, which is carefully scrutinized and reviewed by OMB and Congress prior to approval, reflects the resources necessary to carry out its health and safety mission. The NRC is continuing its streamlining efforts and constantly looks for ways to further improve its operations. However, some of the NRC's streamlining initiatives and the activities required to transition to performance-based licensing require an initial expenditure of resources before the results of those actions are realized. The rebaselined annual fees, which increased for some classes and decreased for other classes, reflect the budgeted costs for each class of licensee. The NRC recognizes that there may be adverse economic impacts on those classes of licensees with fee increases for FY 1999. However, as the NRC has stated in response to similar comments received on previous fee rules, because OBRA-90, as amended, requires the NRC to recover approximately 100 percent of its budget authority through fees, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class of licensee without increasing the fees, and thus creating adverse economic impacts, for another class of licensees. Therefore the NRC has considered only the impacts it is required to consider by law. As required by the Regulatory Flexibility Act of 1980, the NRC has

considered the impact of its fee regulations on small entities and evaluated alternatives to minimize those impacts. This evaluation is included in the Regulatory Flexibility Analysis which is Appendix A to this final rule. As a result of this analysis, the NRC is continuing the maximum annual fee of \$1,800 established in FY 1991 for certain small entities, and the lower-tier small entity fee of \$400 established in FY 1992 for small entities with relatively low gross annual receipts and for manufacturing concerns with relatively few employees.

As explained in the proposed rule, the rebaselined FY 1999 annual fees reflect program changes that have occurred since the last rebaselining in FY 1995. These changes include the NRC's successful downsizing and streamlining efforts. The NRC's budget to be recovered through fees has decreased from approximately \$504.0 million in FY 1995 to approximately \$449.6 million in FY 1999, a reduction of more than 10 percent. In constant 1993 dollars, the NRC's budget has decreased by \$127.5 million, or approximately 24 percent, since FY 1993, as shown in the following table:

Fiscal Year (FY)	1993	1994	1995	1996	1997	1998	1999
Budget (\$ millions, constant 1993 dollars)	540.0	522.4	498.7	439.7	434.1	427.0	412.5
Difference from FY1993 (\$ millions)		17.6	41.3	100.3	105.9	113.0	127.5

The rebaselined FY 1999 annual fees reflect the budgeted costs for each class of licensee, less the estimated Part 170 collections for that class for FY 1999. The FY 1999

annual fees for materials licenses subject to "flat" Part 170 fees also reflect the results of the biennial review of fees as required by the CFO Act, as well as the inclusion of the budgeted costs for license amendments, renewals, and inspections. The FY 1999 annual fees increased for certain categories of these materials licensees. However, these licensees are no longer required to pay Part 170 fees for amendments, renewals, and inspections.

Although fewer resources may be needed to complete licensing reviews and conduct inspections for a particular class of licensees as the number of licensees in the class declines, there is not necessarily a correlation between the number of licensees and the agency's regulatory oversight mission. For instance, the need for rulemaking is not diminished as the number of licensees decrease. However, a portion of the costs associated with certain rulemaking and other generic activities is allocated to the annual fee surcharge based on the ratio of Agreement States licenses to NRC licenses in the affected class of licensees. The surcharge costs are then assessed to all classes of licensees based on their share of the budget. As a result, the full economic impact of additional Agreement States and the resulting loss of NRC licensees is not borne entirely by the affected class.

The NRC's budgets are outside the scope of this rulemaking and therefore commenters' suggestions regarding future NRC budgets are not addressed in this final rule. The NRC's budget is public information and undergoes Office of Management and Budget and Congressional review annually. The NRC is establishing the rebaselined FY 1999 annual fees at the levels necessary to recover the budgeted costs for each class of licensee from that class to the extent practicable, and to recover the surcharge costs from all classes of licensees based on their share of the budget.

3. Uranium Recovery Issues.

Comment. Several comments relating to specific uranium recovery issues were received from uranium recovery licensees and their representatives. The commenters claimed that the uranium recovery industry has been targeted for especially large fee increases and gave several reasons why they believe their treatment under the proposed rule is especially harsh and unfair. The commenters stated that the increases in hourly rates and license fees place an undue burden on the uranium recovery industry, which is suffering from a depressed market. The commenters expressed concern that they cannot "pass through" such costs, and the fee increases directly affect the profitability and viability of an operation. The commenters also indicated that the imposition of such high fees and hourly rates on the uranium recovery industry discourages current uranium production and discourages companies from maintaining facilities in a standby status until market conditions improve. This, commenters claimed, is against the national interest of preserving the domestic energy production infrastructure. Commenters stated that NRC efforts to promote performance-based licenses for uranium recovery licensees should result in lower, not higher, license fees for the uranium recovery class. Commenters pointed to areas where they believe NRC engages in excessive regulatory oversight of the uranium recovery licensees: conducting two inspections each year of uranium in-situ leach (ISL) operations, compared to the one inspection conducted per year before the NRC's closed the Uranium Recovery Field Office, and requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments. The commenters also questioned the need for increased NRC efforts related to groundwater concerns for in-situ facilities when it is questionable if NRC should be regulating in-situ leach wellfields and associated groundwater concerns.

Response. The NRC does not select, or "target," any class of licensees for fee increases or fee reductions. Instead, rebaselined annual fees are established to recover the budgeted costs of NRC's regulatory programs for each class of licensee, plus a percentage of the surcharge costs allocated to that class based on their share of the budget. The NRC has addressed similar comments in previous fee rules concerning the market condition of the uranium recovery industry and the national interest of preserving the energy production infrastructure. The Commission continues to conclude that it cannot set fees based on passthrough considerations. As stated in response to comments on this issue in the FY 1993 fee rule (58 FR 38667; July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency and does not have the resources necessary to evaluate continuously purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA-90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status.

The NRC has examined ways to reduce or eliminate inspections. In establishing inspection frequencies, the NRC considers the risk to public health and safety and the environment. Sites under reclamation are to be inspected once every three years unless a specific request is received from a licensee for the NRC staff to review elements of construction. Sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year, depending on the inspection record. If an operating uranium recovery

licensee has a good inspection record and the NRC determines that a reduced number of inspections is warranted, the NRC will eliminate one annual inspection.

The NRC agrees that performance-based licensing should result in reduced Part 170 fees for uranium recovery licensees. Under a performance-based license, a licensee is allowed flexibility to make certain changes at the site without the need for a license amendment. This streamlined form of license, when implemented properly by the licensee, should result in less hours spent on staff reviews of licensee submittals.

The NRC staff's experience in the area of erosion protection has shown that this is an area where impacts to the impoundment may be the greatest. To provide additional guidance for the licensees in this and other technical areas, the NRC developed a Standard Review Plan for Reclamation of Title II Sites and an erosion report that discusses acceptable design methods and analyses for erosion control. These two documents were released for public comment in February 1999. The NRC staff is reviewing and will be responding to the comments received. The final versions of these documents should provide more clearly the types of design methods and analyses that would serve as acceptable bases for the NRC's staff's conclusions about the stability of the site.

In late 1997, the NRC began examining its role in the regulation of ISL wellfields and the associated groundwater. To assist the NRC in this endeavor, in April 1998, the National Mining Association (NMA) provided the Commission with a White Paper in which it discussed four major concerns, including one related to in-situ facility regulation. Based on the NRC staff's and NMA's concerns, the NRC staff prepared a paper which is now before the

Commission which outlines options for NRC regulation of groundwater and wastes at ISL facilities. The Commission's decision will shape NRC's future regulatory program in this area.

4. NRC'S fee billing systems and practices.

Comment. Two commenters requested that NRC modify its billing systems and practices. NEI requested that NRC allocate the costs of services to individual units at multi-unit sites. NEI complained that under current practice the agency "arbitrarily" allocates site-wide inspection fees to one unit. NEI stated that due to varying ownership percentages in each unit, it is critically important in a competitive environment for site-wide fees to be allocated to the individual units. The NMA requested that NRC continue its efforts to provide bills that contain more meaningful descriptions of the work done. The NMA stated that in the private sector, adequate explanations are provided for clients to fully understand what was done, when it was done, and how much time was spent on each discrete activity. The NMA indicated that such a system could help identify problems, such as excessive time spent on reviews of licensee submittals.

Response. Beginning with the FY 1998 fee rule, which became effective August 10, 1998, the NRC is assessing Part 170 fees to recover all of the resident inspector's time, except leave time and time spent in support of another facility. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. However, a senior resident inspector may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, the NRC is not able at this

time to provide separate billings for each unit for the non-inspection senior resident inspector time. The NRC will pursue modification of its billing system in the future to allocate this senior resident time to each docket on a prorated basis, e.g, if there are three dockets and one senior resident inspector at the site, each docket will be billed for one-third of the senior resident inspector's time that is not related to a specific inspection.

With respect to the request from materials licensees that more detailed information be provided on their bills, the NRC converted to a new billing format in October 1998 for materials licensing actions subject to full cost recovery under Part 170. These bills now provide more detailed information on the charges to support the licensing review costs. A supporting document is included with these bills which provides information on the date of the application, the control number for the application, the name of the NRC reviewer and/or contractor, the number of regular and non-regular hours expended by the reviewer, and the NRC reviewer's title. In FY 2000 the NRC plans to convert to a new inspection fee billing system for materials licensees that will provide more detailed information for inspections.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1999, the NRC's budget authority is \$469.8 million, of which \$17.0 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the

DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this \$3.2 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately \$449.6 million in FY 1999 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 1999 is \$5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

The reduced budgeted costs to be recovered through fees for FY 1999 reflect several actions taken by the NRC. These actions include strategic planning, downsizing, and a more aggressive policy on seeking reimbursement from Federal agencies for performing services that are not a required part of the agency's statutory mission. For example, for FY 1999, the NRC entered into an agreement with the U.S. Agency for International Development to fund NRC's staff costs associated with providing nuclear safety assistance to the countries of the former Soviet Union. As a result, NRC licensees are not required to pay for the costs of this activity in FY 1999. These costs were previously included in NRC's budget authority and the costs were recovered through annual fees assessed to NRC licensees.

The NRC estimates that approximately \$107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to \$94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost under Part 170 for resident inspectors, and a \$4.1 million carryover from additional collections in FY 1998 that were unanticipated at the time the final FY 1998 fee rule was published. In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net

adjustment of approximately \$2.1 million for payments received in FY 1999 for FY 1998 invoices. The remaining \$339.8 million will be recovered in FY 1999 through the 10 CFR Part 171 annual fees, which is approximately \$20.4 million less than in FY 1998.

Table I summarizes the budget and fee recovery amounts for FY 1999:

TABLE I - Budget and Fee Recovery Amounts for FY 1999

(Dollars in Millions)

Total Budget	\$469.8
Less NWF	-17.0
Less General Fund (Reviews for DOE	-3.2
and other Federal agencies)	—
Total Fee Base	\$449.6
Less estimated Part 170 fees	-103.5
Less other receipts (estimated)	-4.2
Part 171 Fee Collections Required	341.9
<u>Part 171 Billing Adjustment¹</u>	
Unpaid FY 1999 invoices (estimated)	3.4
Less estimated payments received in FY 1999 for	
prior year invoices	-5.5
Subtotal	-2.1
Adjusted Part 171 Collections Required	\$339.8

¹These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1999.

Because the final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the Federal Register.

The NRC announced in the FY 1998 proposed rule that the final rule would no longer be mailed to all licensees. However, because the NRC solicited public comments on two potential annual fee schedules for FY 1999, the FY 1999 final rule is being mailed to all licensees. As a cost-saving measure, the NRC does not plan to routinely mail future final fee rules to all licensees, but will send the final rules to any licensee or other person upon request. As a matter of courtesy, the NRC will continue to send the proposed fee rules to all licensees.

In addition to publication in the Federal Register, the final rule is available on the Internet at <http://ruleforum.ini.gov/>. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A. and B. below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended.

Four major amendments have been made to 10 CFR Part 170 as well as several administrative amendments to update information in certain sections and to accommodate the major changes. These amendments further the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the IOAA recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

The major changes to 10 CFR Part 170 are:

1. Expanded Part 170 Cost Recovery.

The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by Project Managers.

Part 170 fees are based on Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by

specifically identified activities of the NRC. The term "special benefits" includes services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

In the NRC's FY 1998 fee rulemaking, steps were taken to more appropriately recover costs for certain activities through Part 170 fees rather than through Part 171 fees. This further expansion of the scope of Part 170 for FY 1999 will result in cost recovery for additional activities through Part 170 fees rather than through Part 171 fees.

a. Inspections.

Part 170 fees will be assessed for all inspections, including licensee-specific performance reviews, assessments, evaluations, and incident investigations. Examples of activities that will be billable under Part 170 are performance assessments of fuel facilities, Diagnostic Evaluation Team assessments, and Incident Investigation Team investigations. Licensees who volunteer to participate in a performance review or assessment at NRC's request and which the NRC accepts will be exempted from these Part 170 fees. The inspections that are being included in Part 170 are "special benefits" provided to identifiable recipients, whether or not an inspection report is issued. For example, incident investigations are investigations of significant operational events involving power reactors and other facilities. Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the

specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, will continue to be recovered through Part 171 annual fees, not through Part 170 fees assessed to the licensee. In addition, any time expended by NRC's Office of Investigations on these activities will be recovered through Part 171 fees. These Part 170 fees will not apply to materials licenses for which no inspection fee is specified in Part 170 because the inspection costs are included in the Part 171 annual fee for those fee categories.

b. Additional Document Reviews.

Part 170 is also expanded to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) Final Safety Analysis Reports (FSARs). Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

c. Project Manager Time.

All Project Manager's (PM) time, excluding leave and time spent on generic activities such as rulemaking, will be recovered through Part 170 fees assessed to the specific applicant

or licensee to which the PM is assigned. This change is applicable to all licensees subject to full cost fees under Part 170 and to which PMs are assigned.

Examples of PM activities which will be subject to Part 170 cost recovery are those associated with oversight of the assigned license or plant (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. Examples of PM generic activities that will not be subject to fee recovery under Part 170 are rulemaking and the development of regulatory guides, generic licensing guides, standard review plans, and generic letters and bulletins. If a PM is assigned to more than one license or site, costs for activities other than licensee-specific licensing or inspection activities will be prorated to each of the licenses or sites to which the PM is assigned. The concept of full cost recovery for PMs is similar to the concept of full cost recovery for Resident Inspectors, which was added to Part 170 in the FY 1998 final fee rule (June 10, 1998; 63 FR 31840).

d. Other.

The NRC also solicited public comment in the proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. The costs of these activities are currently recovered through

Part 171 annual fees. The Commission will further evaluate this issue prior to promulgating the FY 2000 fee rule.

2. Amendment Fees Based on Average Costs.

The NRC is revising 10 CFR 170.31 to eliminate the amendment fees for small materials licensees that are based on the average time to complete the reviews ("flat" fees) and include the amendment processing costs in the Part 171 annual fees assessed to the small materials licensees. This change continues the NRC's initiatives to streamline its fee program. In a similar action, the inspection and renewal fees for these licensees were eliminated in the FY 1995 and FY 1996 fee rulemakings, respectively, and the costs included in the annual fees for these categories of licensees.

Although not all materials licensees request amendments during a given fiscal year, approximately 80 percent request at least one amendment over a five-year period and approximately 40 percent of these licensees request multiple amendments during a five-year period.

In addition to streamlining the NRC process, this change eliminates the steps licensees currently take to submit the payments for their amendment requests. It also eliminates any delays in approving proposed amendments due to incorrect payments and provides an efficient means of recovering these costs. The NRC believes that the efficiencies to be gained outweigh any inequities that may result because not all materials licenses are amended each fiscal year.

This change results in an estimated \$900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

3. Hourly Rates.

The NRC is revising the two professional hourly rates for NRC staff time established in §170.20. These revised rates are based on the number of FY 1999 direct FTEs and the FY 1999 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is \$141 per hour (\$250,403 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under §170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is \$140 per hour (\$248,728 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under §170.31 of the fee regulations. In the FY 1998 final fee rule, these rates were \$124 and \$121, respectively. The FY 1998 rates represented a decrease from FY 1997 of \$7 per hour for the reactor program from FY 1997, and \$4 per hour for the materials program.

This increase can be readily explained. In calculating the FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the FY 1999 hourly rates reflect an increase of \$17 - \$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately

\$10 million in contract support for regional management and support were erroneously coded as direct resources for FY 1998 rather than as overhead. The correction of that error in FY 1999 results in substantial increases in the hourly rates compared to FY 1998, from \$124 to \$141 for the reactor program, and from \$121 to \$140 for the materials program. This is the result of the increased overhead costs to be allocated to the two programs, with fewer direct FTE to divide the costs among. In addition, the proportion of direct resources has shifted. The materials program now has a larger share. Therefore, the materials program must absorb more of the overhead and management and support costs.

Because of the error in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates of \$131 and \$125 for the reactors and materials programs, respectively. Applying only the salary and benefit increases of 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999, would result in FY 1998 hourly rates of \$137 for the reactor program and \$131 for the materials program, and 1999 hourly rates of \$142 for the reactor program and \$136 for the materials program. This does not consider the shift that has occurred in the proportion of direct resources from the reactor program to the materials program that results in the materials program having a larger share and therefore absorbing more of the overhead and management and support costs.

The method used to determine the two professional hourly rates is as follows:

- a. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

b. 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.

c. 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 non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II - FY 1999 Budget Authority to be Included in Hourly Rates

	Reactor <u>Program</u>	Materials <u>Program</u>
Direct Program Salaries & Benefits	\$ 99.2m	\$26.4m
Overhead Salaries & Benefits, Program Travel and Other Support	\$54.1m	\$15.0m
Allocated Agency Management and Support	<u>\$104.2m</u>	<u>\$28.1m</u>
Subtotal	\$257.5m	\$69.5m
Less offsetting receipts	<u>- .1m</u>	<u>-----</u>
Total Budget Included in Hourly Rate	\$257.4m	\$69.5m

Program Direct FTEs	1,028.0	279.7
Rate per Direct FTE	\$250,403	\$248,728
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$141	\$140

As shown in Table II above, dividing the \$257.4 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,028) results in a rate for the reactor program of \$250,403 per FTE for FY 1999. The Direct FTE Hourly Rate for the reactor program is \$141 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$250,403) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Dividing the \$69.5 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (279.7) results in a rate of \$248,728 per FTE for FY 1999. The Direct FTE Hourly Rate for the materials program is \$140 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$248,728) by the number of productive hours in one year (1,776 hours).

Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1999 hourly rates.

4. Fee Adjustments.

The NRC is adjusting the Part 170 fees in §§170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees

required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. The data for the average number of professional staff hours needed to complete licensing action were last updated in FY 1997 (62 FR 29194; May 29, 1997). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1997. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1999 of \$140 per hour.

The licensing fees reflect an increase in average time for new license applications for 20 of the 33 materials fee categories included in the biennial review, a decrease in average time for 8 fee categories, and the same average time for the remaining 5 fee categories. The average time for export and import new license applications and amendments remained the same for 6 fee categories in §§170.21 and 170.31, and decreased for 4 fee categories.

The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under

\$1,000 are rounded to the nearest \$10. Fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of §171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §171.16. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

5. Administrative Amendments.

a. The NRC is amending §170.2, Scope, and §170.3, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. Part 76 certificates are added to the definition of Materials License in §170.3 (Uranium enrichment facilities are already defined in §170.3). These changes are administrative changes to clarify the applicability of Part 170 fees to these Certificates.

b. The NRC is revising the definition of "Inspection" to specifically include performance assessments, evaluations, and incident investigations. This change is being made to incorporate the expansion of Part 170 in this final rule to include these activities.

c. The NRC is revising the definition of "Special projects" to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 Final Safety Analysis Reports in the list of examples of documents submitted for review that would be subject to special project fees. This revision is needed to incorporate the change in this final rule to include the review of these documents in Part 170.

d. The NRC is revising §170.5, Communications, to indicate that all communications concerning Part 170 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

e. The NRC is deleting the current exemption in §170.11(a)(11), which eliminates fees for amendments to change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG-1556¹, Volume 1. This final rule eliminates the requirement for amendment fees for these licenses and thus the exemption is no longer needed.

f. The NRC is adding §170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee

¹Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

volunteers at NRC's request. This change accommodates action in this final rule to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is revising §170.12, Payment of Fees, to reflect the revision to Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section is also revised to delete references to amendment fees for materials licenses that are not based on full cost to reflect the elimination of these fees in this final rule. The costs for these activities will be included in the Part 171 annual fee for these materials licensees.

Section 170.12(h), Method of Payment, is redesignated as §170.12(f) and revised to specify the information the NRC needs to issue refunds. This change is necessitated by new Treasury requirements that were effective January 1, 1999.

In summary, the NRC has:

1. Revised Part 170 to include full cost recovery for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the Project Managers' time excluding time spent on generic activities and leave time;
2. Eliminated Part 170 "flat" amendment fees for materials licenses. The amendment costs will be recovered through Part 171 annual fees assessed to materials licensees;

3. Revised the two 10 CFR Part 170 hourly rates; and
4. Revised the licensing fees assessed under 10 CFR Part 170 to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency, and to reflect the revised hourly rates.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, 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.

The NRC has made three major amendments to 10 CFR Part 171 and several administrative amendments to update information in certain sections and to incorporate the major changes. These major changes result in annual fees being assessed to licensees previously exempted from annual fees, increased annual fees for some licensees, and decreased annual fees for other licensees.

The changes are consistent with our statutory mandate; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec.

at H12692-93). Costs not attributable to a class of licensees are allocated following the conferees' guidance that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." (136 Cong. Rec. at H12692-3). The Conference Report guidance also provides that: "these expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment." As in the past, these costs are allocated to the entire population of NRC licensees that pays annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

The major changes to Part 171 are in the following areas.

1. Reactor Decommissioning/Spent Fuel Storage.

The NRC is revising 10 CFR Part 171.15 to establish a spent fuel storage/reactor decommissioning annual fee. This annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all operating and non-operating Part 50 power reactor licensees, except those power reactor licensees who have permanently ceased operations and have no fuel onsite. The full amount of the FY 1999 annual fee will be billed to those Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment will be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee will

be reflected in the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 will be made in accordance with §171.19(b). The annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage have been eliminated.

This change assures equivalent fee treatment for both wet (spent fuel pool) and dry (Independent Spent Fuel Storage Installation) storage of spent fuel. This change will also ensure that power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

This change does not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees will still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC will continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

2. Annual Fees.

The NRC is establishing new baseline annual fees for FY 1999. The annual fees in §§171.15 and 171.16 are revised for FY 1999 to recover approximately 100 percent of the FY 1999 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 1999 is \$339.8 million, compared to \$360.2 million for FY 1998.

In the FY 1995 final fee rule (60 FR 32218, 32225; June 20, 1995), the NRC stated that it would stabilize annual fees as follows:

For FY 1996 through FY 1999, the NRC 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. If either condition occurred, the annual fee base would be recalculated. 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 fees. This method of determining annual fees is the "percent change" method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

New baseline fees are established for FY 1999 based on the program changes that have taken place since the baseline fees were established in FY 1995, including those resulting from the agency's strategic planning efforts, downsizing, reorganization of agency resources, and the addition of a new annual fee class (spent fuel storage/reactor decommissioning) as previously described. In addition, there have been several fee policy changes since FY 1995. Fee policy changes include the elimination of renewal fees in FY 1996 for most materials licensees, the elimination of amendment fees for these licensees in FY 1999, and the inclusion of these costs in the materials licensees' annual fees.

Table III below shows the FY 1999 rebaselined annual fees for representative categories of licensees.

TABLE III

<u>Class of Licensees</u>	<u>FY 1999 Annual Fee</u>
Power Reactors (including spent fuel storage/reactor decommissioning annual fee)	\$2,776,000
Spent fuel storage/reactor decommissioning	208,000
Nonpower Reactors	85,900
High Enriched Uranium Fuel Facility	3,281,000
Low Enriched Uranium Fuel Facility	1,100,000
UF ₆ Conversion Facility	472,000
Uranium Mills	131,000
Solution Mining	109,000
Transportation	
Users and Fabricators	68,700
Users only	2,200
<u>Typical Materials Licenses</u>	
Radiographers	14,700
Well loggers	8,900
Gauge users	2,600
Broad scope medical	27,800
Broad scope manufacturers	26,000

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees but must be recovered from the licensees to comply with the requirements of OBRA-90. The FY 1999 budgeted costs that will be recovered in the surcharge from all licensees are shown in Table IV.

TABLE IV - Surcharge

Category of Costs	FY 1999 Budgeted Costs (\$, M)
1. Activities not directly attributable to an existing NRC licensee or class of licensee:	
a. International activities	6.3
b. Agreement State oversight	6.4
c. Low-level waste disposal generic activities	4.1
d. Site decommissioning management plan activities not recovered under Part 170	4.6

**2. Activities not assessed Part 170 licensing and
inspection fees or Part 171 annual fees based on
legal constraints or Commission policy:**

a. Fee exemption for nonprofit educational institutions	6.9
b. Licensing and inspection activities associated with other Federal agencies	2.8
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.3

3. Activities supporting NRC operating licensees and others

a. Regulatory support to Agreement States	14.6
b. Generic decommissioning/reclamation, except those related to power reactors	4.2

Total Budgeted Costs	55.2
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The NRC has continued to allocate the surcharge costs, except LLW surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume disposed by the certain

classes of licensees. The surcharge costs allocated to each class are included in the annual fee to be assessed to each licensee. The FY 1999 surcharge costs that are allocated to each class of licensee are shown in Table V.

TABLE V - Allocation of Surcharge

	<u>LLW Surcharge</u>		<u>Non-LLW Surcharge</u>		<u>Total Surcharge</u>
	<u>Percent</u>	<u>\$M</u>	<u>Percent</u>	<u>\$M</u>	<u>\$M</u>
Operating power reactors	74	3.0	80.3	41.0	44.0
Spent fuel storage/ reactor decommissioning	--	---	6.3	3.2	3.2
Nonpower reactors	--	---	0.1	0.0	0.0
Fuel facilities	8	0.4	5.0	2.6	2.9
Materials users	18	0.7	5.9	3.1	3.8
Transportation	--	---	1.0	0.5	0.5
Rare earth facilities	--	---	0.1	0.0	0.0
Uranium recovery	--	---	1.3	<u>0.7</u>	<u>0.7</u>
Total Surcharge		4.1		51.1	55.2

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3. and 4. below. The work papers which support this final

rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The work papers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001.

Because this final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1999 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1999 rule. Those materials licensees whose license anniversary date during FY 1999 falls before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

3. Revised Fuel Cycle and Uranium Recovery Matrixes.

The NRC is adopting revised matrixes in the determination of annual fees for fuel facility and uranium recovery licensees. As part of the rebaselining efforts, the NRC is using a revised matrix depicting the categorization of fuel facility and uranium recovery licenses by authorized material and use/activity and the relative programmatic effort associated with each category.

a. Fuel Facility Matrix.

The NRC is using a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in a more accurate reflection of the NRC's current costs of providing generic and other regulatory services to each type of fuel facility.

The FY 1999 budgeted costs of approximately \$16.3 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. The revisions to the matrix take into account changes in process operations at certain fuel facilities. The revised matrix also explicitly recognizes the addition of the uranium enrichment plants to the fee base and a reduction of three licensees (B&W Parks Township, B&W Research and General Atomic) as the result of the termination of licensed activities. In the revised matrix (which is included in the publicly available work papers), licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from safety and safeguards perspectives. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on

the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders. This would result in a higher fee for those remaining in the fee category.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

The effort factors for the various subclasses of fuel facility licensees are as follows:

	No. of <u>Licenses</u>	<u>Effort Factors</u>	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium Fuel	2	91 (33.1%)	76 (54.7%)
Enrichment	2	70 (25.5%)	34 (24.5%)
Low Enriched Uranium Fuel	4	88 (32.0%)	24 (17.3%)

UF6 Conversion	1	12 (4.4%)	0 (0%)
Limited Operations Facility	1	8 (2.9%)	3 (2.2%)
Others	<u>1</u>	<u>6 (2.2%)</u>	<u>2 (1.4%)</u>
Total	11	275 (100%)	139 (100%)

These effort factors are applied to the \$16.3 million total annual fee amount. This amount includes the low level waste (LLW) surcharge and other surcharges allocated to the fuel facility class.

b. Uranium Recovery Matrix.

Of the \$2.1 million total budgeted costs allocated to the uranium recovery class to be recovered through annual fees, approximately \$870,000 will be assessed to DOE to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining \$1.3 million will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. Because the final FY 1999 annual fees will result in certain uranium recovery licensees going from an annual billing process based on the anniversary date of their license to quarterly billing, those licensees will be billed upon publication of the final FY 1999 rule for the balance of the full FY 1999 annual fee. Payment of the balance of the FY 1999 annual fee will be due on the effective date of the FY 1999 rule.

The NRC has revised the matrix established in FY 1995 to determine the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for

in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed:

(1) The methodology identifies three categories of licenses: conventional uranium mills, solution mining uranium mills, and mill tailings disposal facilities. Each of these categories benefits from the generic uranium recovery program;

(2) The matrix relates the category and the level of benefit, by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements has been further divided into three subelements;

(5) The three major subelements of generic activities related to uranium facility operations are activities related to the operation of the mill, activities related to the handling and disposal of waste, and activities related to prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to decommissioning of facilities and cleanup of land, reclamation and closure of the tailings impoundment, and cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factors and the percentage of the total generic uranium recovery program benefitting the various subclasses are as follows:

<u>Level of Benefit</u>				
	Number of	Weighted	Total For	
	<u>Licenses</u>	<u>Factor</u>	<u>Subclass</u>	<u>Percent</u>
Class I facilities	3	770	2310	31
Class II facilities	7	645	4515	61
11e(2) disposal	1	475	475	6
11e(2) disposal incidental	<u>2</u>	<u>75</u>	<u>150</u>	<u>2</u>

to existing tailings sites

Total	13	1965	7450	100
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4. Annual Fee Determination for Other Classes.

a. Power Reactor Licensees.

The approximately \$267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors is divided equally among the 104 operating reactors. This results in a FY 1999 annual fee of \$2,570,000 per reactor. In addition, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee (see paragraph 4.b.), which for FY 1999 is \$206,000 for each power reactor. This results in a total FY 1999 annual fee of \$2,776,000 for each operating power reactor.

b. Spent Fuel Storage/Reactor Decommissioning.

For FY 1999, budgeted costs of approximately \$24.8 million are to be recovered through annual fees assessed to Part 50 power reactors, except those Part 50 licensees who have permanently ceased operations and have no spent fuel onsite, and to Part 72 licensees who do not hold a Part 50 license. The costs are divided equally among the licensees, resulting in a FY 1999 annual fee of \$206,000 for each licensee.

c. Nonpower Reactors.

Budgeted costs for FY 1999 of approximately \$343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a FY 1999 annual fee of \$85,900.

d. Rare Earth Facilities.

The FY 1999 budgeted costs of approximately \$91,200 for rare earth facilities to be recovered through annual fees are allocated uniformly to the three licensees who have a specific license for receipt and processing of source material. This results in a FY 1999 annual fee of \$30,400.

e. Materials Users.

To equitably and fairly allocate the \$30.5 million in FY 1999 budgeted costs to be recovered in annual fees assessed to the approximately 5700 diverse material users and registrants, the NRC has continued the methodology used in FY 1995 to establish baseline annual fees for this class. The annual fee is based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows:

Annual Fee = (Application Fee + (Average Inspection Cost divided by Inspection Priority)) multiplied by the constant + (Unique Category Costs).

The constant is the multiple necessary to recovery \$30.5 million and is 1.3 for FY 1999. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1999, unique costs of approximately \$955,400 were identified for the medical development program which is attributable to medical licensees. The annual fees for each fee category are shown in §171.16(d).

f. Transportation.

Of the approximately \$3.6 million in FY 1999 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately \$870,000 will be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance DOE holds. Of the remaining \$2.7 million, approximately 10 percent is allocated to holders of approved quality assurance plans authorizing use, and approximately 90 percent will be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use. This results in FY 1999 annual fees of \$2,200 for holders of approved quality assurance plans for use only. The FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use is \$66,700.

5. Administrative Amendments.

a. The NRC is revising §171.9, Communications, to indicate that all communications concerning Part 171 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Office has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

b. The NRC is revising §171.13 to reflect the establishment of an annual fee for power reactors in a decommissioning or possession only status, except those that have no spent fuel onsite.

c. The NRC is revising §171.15 as follows:

(1) The heading for §171.15 is revised to read: Section 171.15 Annual Fees:
Reactor licenses and independent spent fuel storage licenses

(2) Paragraph (b) of §171.15 is revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status that have no spent fuel onsite, and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references are changed from FY 1998 to FY 1999. The activities comprising the base annual fees and the additional charge (surcharge) are listed in §171.15(b), (c), and (d) for convenience purposes.

Each operating power reactor will pay an FY 1999 annual fee of \$2,776,000, which includes the annual fee of \$206,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status, except those who have permanently ceased operations and have no spent fuel on-site, and each Part 72 licensee who does not hold a Part 50 license will pay the spent fuel storage/reactor decommissioning annual fee of \$206,000.

(3) Paragraph (e) of §171.15 is revised to show the amount of the FY 1999 annual fee for nonpower (test and research) reactors. 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).

d. The NRC is revising §171.16 as follows:

(1) 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. This section is revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. 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 will 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 made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

(2) Section 171.16(d) is revised to establish the FY 1999 annual fees for materials licensees, including Federal agencies, licensed by the NRC. The FY 1999 annual fees for materials licenses range from \$600 for a license authorizing the use of source material for shielding, to \$27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. The annual fee for the "master" materials licenses of broad scope issued to Federal agencies is \$358,000.

(3) Footnote 1 of §171.16(d) is being amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. All other licensees and approval holders who held a license or approval on October 1, 1998, will be subject to the FY 1999 annual fees.

Holders of new licenses issued during FY 1999 are subject to a prorated annual fee in accordance with the proration provision of §171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, will not be assessed an annual fee for FY 1999. Thereafter, the full annual

fee will become due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

e. The NRC is revising §171.17 as follows:

(1) Section 171.17(a) is being revised to add an annual fee proration provision for those reactor licensees in a decommissioning or possession only status that have no spent fuel onsite and those Part 72 licensees that do not hold Part 50 licenses. The spent fuel storage/reactor decommissioning annual fee for these licensees will be prorated based on the number of days during the fiscal year the license subject to the annual fee was in effect. This provision is the same as the proration provision provided for operating reactors in this section.

(2) Section 171.17(b) is being revised to exclude Part 72 licenses from the proration provision for materials licenses. The annual fees for Part 72 licenses will be prorated as provided in revised §171.17(a).

f. The NRC is revising Section 171.19 as follows:

(1) Section 171.19(b) is being revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year is

based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

(2) Section 171.19(c) is being revised to update fiscal year references.

As in FY 1998, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than \$100,000 and the revised annual fee for the current fiscal year is \$100,000 or more. In this case, the revised amount will be billed to the licensees upon publication of the final rule in the Federal Register, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 1999, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June

17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1999 before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of their license. Payment will be due on the date of the invoice.

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.

In summary, the NRC has:

1. Established a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminated the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all Part 50 power reactor licensees, except those that have permanently ceased operations and have no spent fuel onsite;
2. Established new baseline annual fees for FY 1999.
3. Used revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is establishing the licensing, inspection, and annual fees necessary to recover approximately 100 percent of its budget authority less amounts appropriated from the Nuclear Waste Fund and the General Fund as required by the Omnibus Budget Reconciliation Act of 1990. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final 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 final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final 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.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final 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 Ass'n. Inc. v. United States, 415 U.S. 352 (1974), and Federal Power Commission v. New England Power Co., 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia Circuit: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Ass'n v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held that--

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998, and was amended in FY 1998 to extend the 100 percent fee recovery requirement through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with §171.13, is publishing the amount of the FY

1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed sources and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1999 budget of \$469.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(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.

In addition, the NRC's FY 1999 appropriations language provides that \$3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

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).

VIII. Regulatory Flexibility Analysis

The NRC is required by OBRA-90 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 final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1999. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final 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 is the small entity compliance guide for FY 1999.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not

required because these final 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.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

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.

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. 552 AND 553, the NRC is adopting 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, Pub. L. 93-4381, 86 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. In §170.2, paragraph (r) is added to read as follows:

§170.2 Scope.

.....

(r) An applicant for or a holder of a certificate of compliance issued under 10 CFR Part 76.

3. In §170.3, the definition of the terms Inspections, Materials license, and Special projects are revised to read as follows:

§170.3 Definitions.

.....

Inspection means:

(1) Routine inspections designed to evaluate the licensee's activities within the context of the licensee having primary responsibility for protection of the public and environment;

(2) Non-routine inspections in response or reaction to an incident, allegation, follow up to inspection deficiencies or inspections to determine implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection;

(3) Reviews and assessments of licensee performance;

(4) Evaluations, such as those performed by Diagnostic Evaluation Teams; or

(5) Incident investigations.

.....

Materials license means a license, certificate, approval, registration, or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72 and 76.

.....

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical reports reviews, early site reviews, waste solidification facilities, route

approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) 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 the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

* * * * *

4. Section 170.5 is revised to read as follows:

§170.5 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

5. In §170.11, paragraph (a)(11) is removed and reserved and paragraph (a)(12) is added to read as follows:

§170.11 Exemptions.

(a) * * *

(12) A performance assessment or evaluation for which the licensee volunteers at the NRC's request and which is selected by the NRC.

* * * * *

6. Section 170.12 is revised to read as follows:

§170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or

adding a new fee category prior to receiving the prescribed application fee. The application fee(s) is charged whether the Commission approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

(b) *Licensing fees.* (1) Licensing fees will be assessed to recover full costs for - -

(i) The review of applications for new licenses and approvals;

(ii) The review of applications for amendments to and renewal of existing licenses or approvals;

(iii) Preapplication consultations and reviews; and

(iv) The full cost for project managers assigned to a specific plant or facility, excluding leave time and time spent on generic activities (such as rulemaking).

(2) Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Commission.

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed, except for costs that were deferred before August 9, 1991. The

deferred costs will be billed as described in paragraphs (b)(5), (b)(6) and (b)(7) of this section. Each bill will identify the applications and documents submitted for review and the costs related to each.

(4) The NRC intends to bill each applicant or licensee for costs related to project manager time on a quarterly basis. Each bill will identify the costs related to project manager time.

(5) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this rule must be paid as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all of the costs are not recovered, within fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the renewal, or remainder of those costs, at that time.

(6) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an

application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(7) (i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of the rule must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR Part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those, at the time.

(iii) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

(c) Inspection fees. (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (i.e., all time in a non-leave status will be billed), and the hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

(2) Inspection fees will be assessed to recover the full cost for each specific inspection, including plant- or licensee-specific performance reviews and assessments, evaluations, and incident investigations. For inspections that result in the issuance of an inspection report, fees will be assessed for costs incurred up to approximately 30 days after the inspection report is issued. The costs for these inspections include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) The NRC intends to bill for resident inspectors' time and for specific inspections subject to full cost recovery on a quarterly basis. The fees are payable upon notification by the Commission.

(d) Special Project Fees. (1) Fees for special projects are based on the full cost of the review. Special projects includes activities such as--

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports; and

(v) 10 CFR 50.71 final safety analysis reports.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review is completed. Each bill will identify the documents submitted for review and the costs related to each. The fees are payable upon notification by the Commission.

(e) *Part 55 review fees.* Fees for Part 55 review services are based on NRC time spent in administering the examinations and tests and any related contractual costs. The fees assessed will also include related activities such as preparing, reviewing, and grading of the examinations and tests. The NRC intends to bill the costs at quarterly intervals to the licensee employing the operators.

(f) *Method of payment.* All license fee payments are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card. Payment of invoices of \$5,000 or more

should be paid via ACH through NRC's 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 at the address indicated on the invoice. Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the License Fee and Accounts Receivable Branch at 301-415-7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

7. 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 will be calculated using the following applicable professional staff-hour rates:

Reactor Program	\$141 per hour
(§170.21 Activities)	
Nuclear Materials and	\$140 per hour
Nuclear Waste Program	
(§170.31 Activities)	

8. In §170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are 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

Fees^{1/2/}

.....

K. Import and export licenses:

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

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

Application-new license \$9,100
Amendment \$9,100

2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).

Application-new license \$5,600
Amendment \$5,600

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

Application-new license \$1,700
Amendment \$1,700

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

Application-new license	\$1,100
Amendment	\$1,100

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 in-depth analysis or review.

Amendment	\$210
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¹ Fees will not be charged for orders issued by the Commission under §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For 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 the final rule will be determined at the professional rates in effect at the time the service was provided. 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 any 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 applicable rate established in §170.20.

.....

9. 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.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

<u>Category of materials licenses and type of fees¹</u>	<u>Fee^{2,3}</u>
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and inspection	Full Cost
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. ⁴	

Application \$640

- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:⁴

Application \$1,300

- E. Licenses or certificates for construction and operation of a uranium enrichment facility.

Licensing and inspection Full Cost

2. Source material:

- A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

Licensing and inspection Full Cost

- (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).

Licensing and inspection Full Cost

- (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).

Licensing and inspection Full Cost

- B. Licenses which authorize the possession, use, and/or installation of source material for shielding:

Application \$150

- C. All other source material licenses:

Application \$5,500

3. Byproduct material:

- A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application \$6,600

- B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application \$2,400

- C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.

Application \$10,200

- D. Licenses and approvals issued under §§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 under §§32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).

Application \$2,400

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application \$1,700

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application \$3,300

- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application \$3,400

- H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements

of Part 30 of this chapter:

Application \$2,000

- I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application \$3,200

- J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application \$1,000

- K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing

redistribution of items that have been authorized for distribution
to persons generally licensed under Part 31 of this chapter:

Application \$600

- L. Licenses of broad scope for possession and use of byproduct
material issued under Parts 30 and 33 of this chapter for
research and development that do not authorize commercial
distribution:

Application \$5,500

- M. Other licenses for possession and use of byproduct material issued
under Part 30 of this chapter for research and development
that do not authorize commercial distribution:

Application \$2,300

- N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing
services are subject to the fees specified in fee Category 3P; and
(2) Licenses that authorize waste disposal services are subject to the
fees specified in fee Categories 4A, 4B, and 4C:

Application \$2,300

- O. Licenses for possession and use of byproduct material issued
under Part 34 of this chapter for industrial radiography
operations:

Application \$5,800

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application \$1,300

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 authorized to receive or dispose of waste material:

Licensing and inspection Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application \$1,700

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application \$2,500

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application \$6,000

- B. Licenses for possession and use of byproduct material for field flooding tracer studies:

Licensing Full Cost

6. Nuclear laundries:

- A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application \$11,200

7. Medical licenses:

- A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application \$6,100

- B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application \$4,400

- C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application \$2,400

8. Civil defense:

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application \$320

9. Device, product, or sealed source safety evaluation:

- A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:**

Application-each device \$5,200

- B. 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:**

Application - each device \$3,700

- C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:**

Application - each source \$1,580

- D. Safety evaluation of sealed sources 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:**

Application - each source \$530

10. Transportation of radioactive material:

A. Evaluation of casks, packages, and shipping containers:

Licensing and inspection Full Cost

B. Evaluation of 10 CFR Part 71 quality assurance programs:

Application \$390

Inspections Full Cost

11. Review of standardized spent fuel facilities:

Licensing and inspection Full Cost

12. Special projects:⁵

Approvals and preapplication/

Licensing activities Full Cost

Inspections Full Cost

13. A. Spent fuel storage cask Certificate of Compliance:

Licensing Full Cost

B. Inspections related to spent fuel storage cask Certificate of

Compliance Full Cost

C. Inspections related to storage of spent fuel under §72.210 of this

chapter Full Cost

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:

Licensing and inspection Full Cost

15. Import and Export licenses:

Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.

- A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.

Application - new license \$9,100
Amendment \$9,100

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive

waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

Application-new license	\$5,800
Amendment	\$5,800

- C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

Application-new license	\$1,700
Amendment	\$1,700

- D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

Application-new license	\$1,100
Amendment	\$1,100

- E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other

revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.

Amendment \$210

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of Form 241) \$1,200

Revisions \$200

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, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) Application fees. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(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.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories 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).

(c) Amendment/revision fees.

Applications for amendments to export and import licenses and revisions to reciprocity initial applications 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.

(d) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with §170.12(c).

² Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under 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 in effect now or in the future) 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 multiplied by the appropriate professional hourly rate established in §170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For 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 applicable rate established 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 for an application that deals only with the sealed sources authorized by the license.

* Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(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.

10. The heading of Part 171 is revised to read as follows:

PART 171 -- ANNUAL FEES FOR REACTOR 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.

11. 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).

12. Section 171.9 is revised to read as follows:

§171.9 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

13. Section 171.13 is revised to read as follows:

§171.13 Notice.

The annual fees applicable to any NRC licensee subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the Federal Register as soon as possible but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the

NRC as indicated in §171.19. Quarterly payments of the annual fee of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§171.15 and 171.16 until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, fees would be assessed based on the rates in effect for the previous fiscal year.

14. Section 171.15 is revised to read as follows:

§171.15 Annual Fee: Reactor licenses and spent fuel storage/reactor decommissioning

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

(b)(1) The FY 1999 annual fee for each operating power reactor is \$2,776,000.

(2) The FY 1999 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$206,000.

(2) This fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (this fee is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

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

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

(2) The total FY 1999 surcharge allocated to operating power reactor class of licensees is \$44 million, not including the amount allocated to the new fee class, spent fuel storage/reactor decommissioning. The FY 1999 operating power reactor surcharge to be assessed to each operating power reactor is \$423,000. This amount is calculated by dividing the total operating power reactor surcharge (\$44 million) by the number of operating power reactors (104).

(3) The FY 1999 surcharge allocated to spent fuel storage/reactor decommissioning class of licensees is \$3.2 million. The FY 1999 spent fuel storage/reactor decommissioning surcharge to be added to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$26,500. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licensees, except those that permanently ceased operations and have no fuel onsite, and Part 72 licensees who do not hold a Part 50 license.

(e) The FY 1999 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor	\$85,900
Test reactor	\$85,900

15. Section §171.16 is revised to read as follows:

§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.

(a)(1) The provisions of this section apply to person(s) who are authorized to conduct activities under--

- (i) 10 CFR part 30 for byproduct material;
- (ii) 10 CFR part 40 for source material;
- (iii) 10 CFR part 70 for special nuclear material;
- (iv) 10 CFR part 71 for packaging and transportation of radioactive material; and
- (v) 10 CFR part 76 for uranium enrichment.

(2) Each person identified in paragraph (a)(1) of this section shall pay an annual fee for each license the person holds at any time during the first six months of the Federal fiscal year (October 1 through March 31). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period October 1 through March 31 of the fiscal year as provided in §171.17 of this section. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If you hold more than one license, the total annual fee you will be assessed will be the cumulative total of the annual fees applicable to the licenses you hold.

(b) The annual fee is comprised of a base annual fee and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (e) of this section. The activities comprising the base annual fee is the sum of the NRC budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities that are recovered under Part 170 of this chapter.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees for as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

<u>Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$350,000 to \$5 million	\$1,800
Less than \$350,000	\$400
<u>Manufacturing entities that have an average of 500 employees or less</u>	
35 to 500 employees	\$1,800
Less than 35 employees	\$400

Small Governmental Jurisdictions

(Including publicly supported

educational institutions)

(Population)

20,000 to 50,000 \$1,800

Less than 20,000 \$400

Educational Institutions that

are not State or Publicly

Supported, and have 500 Employees

or Less.

35 to 500 employees \$1,800

Less than 35 employees \$400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on

NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is \$1,800 for each category applicable to the license(s).

(d) The FY 1999 annual fees, including the surcharge shown in paragraph (e) of this section, for materials licensees subject to fees under this section are shown below:

**SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC**

(See footnotes at end of table)

Category of materials licenses

Annual Fees^{1, 2, 3}

1. Special nuclear material:

**A.(1) Licenses for possession and use of
U-235 or plutonium for fuel fabrication**

activities.

(a) Strategic Special Nuclear

Material:

Babcock & Wilcox SNM-42..... \$3,281,000

Nuclear Fuel Services

SNM-124..... \$3,281,000

(b) Low Enriched Uranium in
Dispersible Form Used for
Fabrication of Power Reactor

Fuel:

Combustion Engineering

(Hematite) SNM-33..... \$1,100,000

General Electric Company

SNM-1097 \$1,100,000

Siemens Nuclear Power

SNM-1227.....\$1,100,000

Westinghouse Electric Company

SNM-1107.....\$1,100,000

- (2) All other special nuclear materials
licenses not included in Category 1.A.(1)
which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

Framatome Cogema SNM-1168.....\$432,000

(b) All Others:

General Electric SNM-960.....\$314,000

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).....See 10 CFR part 171.15(c)
- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.....\$1,200
- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2).....\$3,300
- E. Licenses or certificates for the operation of a uranium enrichment facility.....\$2,043,000

2. Source material:

A.(1) Licenses for possession and use of
source material for refining uranium mill
concentrates to uranium hexafluoride.....\$472,000

(2) Licenses for possession and use of
source material in recovery operations
such as milling, in-situ leaching,
heap-leaching, ore buying stations, ion
exchange facilities and in processing of
ores containing source material for
extraction of metals other than uranium
or thorium, including licenses authorizing
the possession of byproduct waste
material (tailings) from source material
recovery operations, as well as licenses
authorizing the possession and
maintenance of a facility in a standby
mode.

Class I facilities⁴.....\$131,000

Class II facilities⁴..... \$109,000

Other facilities⁴.....\$30,400

(3) Licenses that authorize the receipt of
byproduct material, as defined in Section
11e.(2) of the Atomic Energy Act, from

other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4).....\$81,000

(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2).....\$13,000

B. Licenses that authorize only the possession, use and/or installation of source material for shielding.....\$600

C. All other source material licenses.....\$11,700

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material

for commercial distribution..... \$26,000

B. Other licenses for possession and use of
byproduct material issued under
Part 30 of this chapter for processing or
manufacturing of items containing
byproduct material for commercial
distribution.....\$6,300

C. Licenses issued under §§32.72,
32.73, and/or 32.74 of this chapter
authorizing the processing or
manufacturing and distribution or
redistribution of radiopharmaceuticals,
generators, reagent kits and/or sources
and devices containing byproduct
material. This category also includes the
possession and use of source material
for shielding authorized under Part
40 of this chapter when included on the
same license. This category does not
apply to licenses issued to nonprofit
educational institutions whose
processing or manufacturing is exempt
under 10 CFR 171.11(a)(1). These
licenses are covered by fee Category
3D..... \$15,300

D. Licenses and approvals issued under

§§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 under §§32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license.....\$3,800

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)..... \$3,400

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for

irradiation of materials in which the
source is not exposed for irradiation
purposes..... \$5,700

G. Licenses for possession and use of
10,000 curies or more of byproduct
material in sealed sources for irradiation
of materials in which the source is
exposed for irradiation purposes. This
category also includes underwater
irradiators for irradiation of materials in
which the source is not exposed for
irradiation purposes.....\$14,800

H. Licenses issued under Subpart A
of Part 32 of this chapter to distribute
items containing byproduct material
that require device review to persons
exempt from the licensing requirements
of Part 30 of this chapter, except
specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
exempt from the licensing requirements
of Part 30 of this chapter..... \$3,200

I. Licenses issued under Subpart A
of Part 32 of this chapter to distribute
items containing byproduct material

or quantities of byproduct material that
do not require device evaluation to
persons exempt from the licensing
requirements of Part 30 of this chapter,
except for specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
exempt from the licensing requirements
of Part 30 of this chapter..... \$4,600

J. Licenses issued under Subpart B
of Part 32 of this chapter to distribute
items containing byproduct material
that require sealed source and/or device
review to persons generally licensed
under Part 31 of this chapter, except
specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
generally licensed under Part 31 of this
chapter..... \$2,100

K. Licenses issued under Subpart B
of Part 31 of this chapter to distribute
items containing byproduct material or
quantities of byproduct material that do
not require sealed source and/or device
review to persons generally licensed
under Part 31 of this chapter, except

specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
generally licensed under Part 31 of this
chapter..... \$1,700

L. Licenses of broad scope for possession
and use of byproduct material issued
under Parts 30 and 33 of this
chapter for research and development
that do not authorize commercial
distribution.....\$11,200

M. Other licenses for possession and use of
byproduct material issued under
Part 30 of this chapter for research and
development that do not authorize
commercial distribution.....\$5,000

N. Licenses that authorize services for
other licensees, except:

(1) Licenses that authorize only
calibration and/or leak testing
services are subject to the fees
specified in fee Category 3P; and

(2) Licenses that authorize waste
disposal services are subject to the
fees specified in fee Categories

4A, 4B, and 4C..... \$5,200

O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license.....\$14,700

P. All other specific byproduct material licenses, except those in Categories 4A through 9D..... \$2,600

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 authorized to receive or
dispose of waste material..... N/A⁵

B. Licenses specifically authorizing the
receipt of waste byproduct material,
source material, or special nuclear
material from other persons for the
purpose of packaging or repackaging
the material. The licensee will dispose
of the material by transfer to another
person authorized to receive or dispose
of the material.....\$11,300

C. Licenses specifically authorizing the
receipt of prepackaged waste byproduct
material, source material, or special
nuclear material from other persons.
The licensee will dispose of the material
by transfer to another person authorized
to receive or dispose of the material.....\$8,400

5. Well logging:

A. Licenses for possession and use of
byproduct material, source material,
and/or special nuclear material for well

logging, well surveys, and tracer studies
other than field flooding tracer studies..... \$9,900

B. Licenses for possession and use of
byproduct material for field flooding
tracer studies..... N/A⁵

6. Nuclear laundries:

A. Licenses for commercial collection and
laundry of items contaminated with
byproduct material, source material,
or special nuclear material.....\$18,900

7. Medical licenses:

A. Licenses issued under Parts 30,
35, 40, and 70 of this chapter for human
use of byproduct material, source
material, or special nuclear material in
sealed sources contained in teletherapy
devices. This category also includes the
possession and use of source material
for shielding when authorized on the
same license.....\$15,300

B. Licenses of broad scope issued to
medical institutions or two or more
physicians under Parts 30, 33, 35,

40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.⁹\$27,800

C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.⁹\$5,800

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities..... \$1,200

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.....\$6,000
- 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.....\$4,300
- C. Registrations issued for the safety
evaluation of sealed sources containing
byproduct material, source material,
or special nuclear material, except
reactor fuel, for commercial distribution.....\$1,600
- D. Registrations issued for the safety
evaluation of sealed sources 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.....\$600

10. Transportation of radioactive material:

- A. Certificates of Compliance or other
package approvals issued for design of
casks, packages, and shipping
containers.

Spent Fuel, High-Level Waste, and
plutonium air packages..... N/A⁶

Other Casks..... N/A⁶

- B. Quality assurance program approvals issued
under 10 CFR Part 71

Users and Fabricators.....\$66,700

Users.....\$2,200

11. Standardized spent fuel facilities..... N/A⁶

12. Special Projects..... N/A⁶

13. A. Spent fuel storage cask Certificate of
Compliance..... N/A⁶

<p>B. General licenses for storage of spent fuel under 10 CFR 72.210.....</p>		N/A (See 10 CFR Part 171.15(c))
<p>14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter.....</p>		N/A¹
15. Import and Export licenses.....		N/A¹
16. Reciprocity.....		N/A¹
<p>17. Master materials licenses of broad scope issued to Government agencies.....</p>		\$358,000
18. Department of Energy:		
A. Certificates of Compliance.....		\$872,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities.....		\$360,000

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. Annual fees for licensees who filed for termination of a

license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

⁴ A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

⁵ There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

⁶ Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.



⁸ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

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 surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly 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 reviews for 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.

16. Section 171.17 is revised to read as follows:

§171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors and Part 72 licensees who do not hold Part 50 licenses. The annual fees for power and nonpower reactors and those Part 72 licensees who do not hold a Part 50 license that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full annual fee is due and payable each subsequent fiscal year. The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the fiscal year will be prorated on the basis of the number of days remaining in the fiscal year after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those Part 72 licensees who do not hold a Part 50 license who request termination of the Part 72 license and permanently cease activities authorized by the license during the fiscal year based on the number of days the license was in effect prior to receipt of the termination request.

(b) Materials licenses (excluding Part 72 licenses included in §171.17(a)). (1) New licenses and terminations. The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

(2) Downgraded licenses. (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary

circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications to downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

17. Section 171.19 is 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 electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of \$5,000 or more should be paid via ACH through NRC's 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. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of \$100,000 or more and described in the Federal Register notice issued under §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1998 was less than \$100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 1999 is \$100,000 or more (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the FY 1999 annual fee, less any payments received for FY 1999 based on the anniversary date billing process.

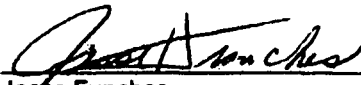
(c) Annual fees that are less than \$100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in 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.

(d) Annual fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 31st day of June, 1999.

For the Nuclear Regulatory Commission.


Jesse Funches,
Chief Financial Officer.

10 CFR PART 171 (ANNUAL FEES)

i. Background.

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 et seq.) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in §171.16(c) of this final rule are based on the NRC's size standards.

The Omnibus Budget Reconciliation Act (OBRA-90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to

recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 1999 is approximately \$449.6 million.

Since 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

Because the NRC is establishing a new annual fee class for FY 1999 and based on program changes that have occurred, the NRC is establishing new baseline annual fees this fiscal year. This rebaselining results in an increase in the annual fees charged to some categories of materials licensees.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 1999 fee rule as required by law.

II. Impact on small entities.

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an competitive extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee 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. Other licensees, especially well-loggers, noted that the increased fees would force 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.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others 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.

Since 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 indicating that the monetary threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that even 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 significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

The NRC established, and is continuing for FY 1999, 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 1999, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

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, will pay for most of the FY 1999 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to 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 significantly. Therefore, the NRC is continuing for FY 1999, 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 each year since 1992, 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. Therefore, even though the rebaselined annual fees will result in increased annual fees charged to several categories of materials licensees, licensees who qualify as small entities will not be adversely affected.

The NRC has determined that the 10 CPH Part 171 annual fees significantly impact 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-for-profit 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 fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions established in previous fee rules remain valid for FY 1999.

ATTACHMENT 1 TO APPENDIX A

U. S. Nuclear Regulatory Commission

Small Entity Compliance Guide

Fiscal Year 1999

Contents

Introduction

NRC Definition of Small Entity

NRC Small Entity Fees

Instructions for Completing NRC Form 526

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, is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees in complying with the FY 1999 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 1999 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, 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, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

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

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.

In 10 CFR 171.16 (c), 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:

<u>Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$350,000 to \$5 million	\$1,800
Less than \$350,000	\$400
<u>Manufacturing entities that have an average of 500 employees or less</u>	
35 to 500 employees	\$1,800
Less than 35 employees	\$400
<u>Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)</u>	
20,000 to 50,000	\$1,800
Less than 20,000	\$400
<u>Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less</u>	
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 annual fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

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:
 - (1) The size standards apply to the licensee, not the individual authorized users listed in the license.
 - (2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

- (3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.
- (4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$1,800 or \$400 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$900 or \$200 for each fee category billed instead of the full small entity annual fee of \$1,800 or \$400.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of 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 at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found at 10 CFR Part 13.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 12, 1993

The Honorable Rob Portman
United States House of Representatives
Washington, DC 20515-3502

Dear Congressman Portman:

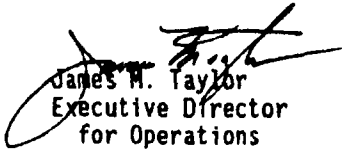
I am responding to your letter of September 21, 1993, written on behalf of your constituent, Dr. Terrance P. Toepker, Professor, Xavier University, regarding NRC fees.

In accordance with the requirements of OBRA-90 to recover 100 percent of our budget authority, the NRC published a final rule on July 20, 1993, establishing annual fee schedules for its licensees for fiscal year 1993. The final rule also eliminated a generic exemption from annual fees previously applicable to nonprofit educational institutions. The Commission's need to revisit the generic exemption for nonprofit educational institutions was occasioned by a March 14, 1993, decision of the U.S. Court of Appeals for the District of Columbia Circuit (*Allied Signal, Inc. v. U.S. Nuclear Regulatory Commission and the United States of America*, No. 91-1407 and Consolidated Cases) which forced the Commission to acknowledge the weakness of, and abandon, the passthrough argument formerly made on behalf of these institutions.

Following the publication of the final rule, the Commission received a petition from Cornell and eleven other universities for reconsideration of the final rule and requesting reinstatement of the exemption for nonprofit educational institutions. The Commission has decided to grant the petition to reconsider this matter and is issuing a proposed rule to amend 10 CFR Part 171 to restore the generic exemption from annual fees for nonprofit educational institutions.

Enclosed is a copy of the proposed rule which was published in the Federal Register on September 29, 1993, for a 30-day comment period.

Sincerely,


James M. Taylor
Executive Director
for Operations

Enclosure:
Proposed Rule

9312150142 931012
PDR PR
171 58FR50859 PDR

cc 58

7/6

October 12, 1993

The Honorable Rob Portman
United States House of Representatives
Washington, DC 20515-3502

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In accordance with the requirements of OBRA-90 to recover 100 percent of our budget authority, the NRC published a final rule on July 20, 1993, establishing annual fee schedules for its licensees for fiscal year 1993. The final rule also eliminated a generic exemption from annual fees previously applicable to nonprofit educational institutions. The Commission's need to revisit the generic exemption for nonprofit educational institutions was occasioned by a March 14, 1993, decision of the U.S. Court of Appeals for the District of Columbia Circuit (*Allied Signal, Inc. v. U.S. Nuclear Regulatory Commission and the United States of America*, No. 91-1407 and Consolidated Cases) which forced the Commission to acknowledge the weakness of, and abandon, the passthrough argument formerly made on behalf of these institutions.

Following the publication of the final rule, the Commission received a petition from Cornell and eleven other universities for reconsideration of the final rule and requesting reinstatement of the exemption for nonprofit educational institutions. The Commission has decided to grant the petition to reconsider this matter and is issuing a proposed rule to amend 10 CFR Part 171 to restore the generic exemption from annual fees for nonprofit educational institutions.

Enclosed is a copy of the proposed rule which was published in the *Federal Register* on September 29, 1993, for a 30-day comment period.

Sincerely,

Original signed by
James M. Taylor

James M. Taylor
Executive Director
for Operations

Enclosure:
Proposed Rule

OFFICE:

NAME:

DATE:

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Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule sets forth the time frame within which a person other than an applicant must file a request for a hearing in a licensing proceeding held under the informal procedures set forth in 10 CFR part 2, subpart L. The proposed rule, by itself, does not impose any obligations on regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the small business size standards contained in 13 CFR part 121.

Backfit Analysis

This proposed rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 161, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 78 Stat. 409 (42 U.S.C. 2241); sec. 201, 68 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. 1218 (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 2.104 also issued under sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued 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), (j), 2236, 2282), sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). 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 and table 1A of appendix C 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. 103, 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).

2. In § 2.1205(c), introductory text is republished and paragraph (c)(2) is revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

(c) A person other than an applicant shall file a request for a hearing within—

(2) If a Federal Register notice is not published in accordance with paragraph (c)(1) of this section, the earliest of—

(i) Thirty (30) days after the requestor receives actual notice of a pending application, or

(ii) Thirty (30) days after the requestor receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty (180) days after agency action granting an application in whole or in part.

Dated at Rockville, Maryland, this 23rd day of September, 1993.

For the Nuclear Regulatory Commission,
Samuel J. Chalk,

Secretary of the Commission.

[FR Doc. 93-23835 Filed 9-28-93; 8:45 am]

BILLING CODE 7580-01-P

10 CFR Part 171

RIN 3150-AE63

Restoration of the Generic Exemption From Annual Fees for Nonprofit Educational Institutions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: On July 20, 1993, the Nuclear Regulatory Commission ("NRC" or "Commission") published a final rule establishing annual fee schedules for its licensees for fiscal year 1993. The final rule eliminated a generic exemption from annual fees previously applicable to nonprofit educational institutions (educational exemption). Following publication of this rule, the Commission received a petition for reconsideration requesting reinstatement of the educational exemption. The Commission views the petition as a request to conduct a new rulemaking to amend the final rule by restoring the exemption. The Commission grants the request for a new rulemaking. The new rulemaking reconsiders whether nonprofit educational institutions should receive a generic exemption from annual fees. The Commission requests public comment on that question. The rulemaking proceeding will address no other annual fee question.

DATE: Comment period expires October 29, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-504-1966.)

Copies of comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW., (Lower Level) Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafferty, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-504-1806.

SUPPLEMENTARY INFORMATION:

I. Background.

II. Section-by-section analysis.

III. Environmental impact: categorical exclusion.

IV. Paperwork reduction act statement.

V. Regulatory analysis.

VI Regulatory flexibility analysis
VII Backfit analysis.

I. Background

On July 20, 1993 the Commission published its final annual fee rule for FY 1993 (58 FR 38666). The final rule principally set out the Commission's fee schedules for FY 1993, but it also discussed in some detail the 3-2 Commission decision to revoke a generic exemption previously applicable to nonprofit educational institutions. A court of appeals decision, issued in March 1993, had necessitated the Commission's rethinking of the educational exemption. See *Allied-Signal Inc. v. NRC*, 988 F.2d 146 (D.C. Cir. 1993). That decision cast doubt on the NRC's stated rationale—which included a purported inability to “pass through” costs—for exempting nonprofit educational institutions from annual fees.

In reaction to the court decision, the Commission initially proposed to retain the educational exemption, but with a fresh rationale. In its proposed FY 1993 annual fee rule, the Commission requested comments on retaining the exemption, and asked specifically for comments on the court's suggestion that perhaps the exemption could be justified if “education yields exceptionally large externalized benefits that cannot be captured in tuition or other market prices.” 988 F.2d at 151. The Commission also requested comments on whether the exemption should be revoked.

Following the close of the comment period, the Commission faced a dilemma. It remained committed to the value of nuclear education and related research as a policy matter, but it had received only a few comments, and cursory ones at that, supporting a continued generic exemption. Additionally, some NRC licensees had submitted comments requesting abandonment of the exemption altogether or a more equitable spread of its costs to all licensees. Still other commenters urged that the exemption be retained, but that it be expanded to include various other licensed activities.

After considering the material before it, a split Commission, by a 3-2 vote, “reluctantly concluded that in view of the court decision and the administrative record developed during the comment period it cannot justify a generic ‘educational’ exemption for FY 1993” (58 FR 38668-69). Therefore, the Commission informed formerly exempt nonprofit educational institutions that they would have to pay annual fees beginning in FY 1993. The Commission did point out that many of these

institutions might be able to make individualized showings of financial hardship and externalized benefits sufficient to justify a “public interest” exemption under 10 CFR 171.11(b) (58 FR 38669). The two dissenting Commissioners took the view that the Commission should continue in force the generic educational exemption (58 FR 38675).

Almost immediately the Commission began receiving letters from many colleges and universities protesting the change in its longstanding policy. Many of these letters were sent as comments regarding the Commission's concurrent fee policy study now being conducted as required by the Energy Policy Act of 1992 (58 FR 21116). In these letters and comments (available in the NRC Public Document Room (“PDR”)), educational institutions described the “externalized benefits” derived from their programs and the problems created by the new annual fees, including the prospect of major cutbacks in nuclear education. Some licensees also pointed out that their programs were already heavily subsidized by the Federal government (in particular by the Department of Energy), precisely because the programs were not sustainable absent public sector support.

The Commission also received a formal petition for reconsideration of the FY 1993 final rule with the aim of restoring the nonprofit educational exemption. See *Petition for Reconsideration of Final Rule* (July 30, 1993). In this petition for reconsideration (which is being published as an appendix to this proposed rule), a number of formerly exempt colleges and universities asserted with some specificity a number of benefits that educational institution research reactors provide to both the nuclear industry and the public at large. Prominent was the continued training of nuclear scientists and engineers (petition at 3-4). The petitioners also stated that nuclear technology was used in fields as varied as medicine, geology, archaeology, food science and textiles and that the public additionally benefited from people who could provide knowledgeable opinions on nuclear topics, as well as from tours of research reactors (petition at 4-5).

The petitioners went on to argue that education provides significant “externalized benefits” warranting public subsidy. They cited a letter from economist Alfred Kahn (also available in the attached appendix) stating that the knowledge generated by university-related research is itself a public good that cannot be quantified using market indices (petition at 6-7). Mr. Kahn's

letter argues that it is “inefficient” and “socially and economically undesirable” to charge people for access to pure knowledge, because the benefits of that knowledge “are largely unpredictable.” Letter from Alfred Kahn to Shirley Egan, Associate University Counsel, Cornell University (July 15, 1993).

The petitioners also stressed the harm to university nuclear programs as a result of the newly imposed annual fees (petition at 8-9). Using Cornell University's nuclear program as an example, they asserted that Federal grants (in addition to those already provided) might be necessary to meet the additional costs of NRC annual fees (petition at 9-10). Finally, the petitioners argued that the Commission's longstanding exemption for nonprofit educational institutions was rooted in sound policy, and that reinstating the exemption would be consistent with the already extensive direct Federal funding provided many college and university licensees (petition at 12-13).

In August, while the petition for reconsideration was under consideration, the Commission undertook an effort of its own to develop guidance for considering individual “public interest” exemption requests by colleges and universities. As part of this effort, the NRC staff visited a number of colleges and universities to learn more about their educational activities and the benefits of non-power reactors and the use of nuclear materials in education programs. The Commission concluded that the new annual fees (\$62,100 for each research reactor license; lesser amounts for each materials license) would jeopardize the educational and related research benefits provided by a number of colleges and universities.

As a result of the new and more detailed information and arguments developed in the petition for reconsideration and in the other sources described above, and after careful reflection, the Commission now is inclined to return to its previous practice of exempting nonprofit educational institutions from annual fees. The Commission therefore grants the petition for reconsideration of the FY 1993 final rule and now proposes to exempt nonprofit educational institutions from annual fees. The Commission does not intend to create any other generic exemption categories in this rulemaking.

The Commission does not propose lightly this further shift in a policy that has already gone through a major change in a short time. The Commission

was sharply divided from the outset on the wisdom of eliminating the generic educational exemption. New information and fresh thinking have persuaded the entire Commission that restoration of the exemption reflects a sound policy choice that avoids placing in jeopardy valuable educational resources that are indispensable to the nuclear industry, to numerous other educational activities, to the NRC itself and to the public at large.

The Commission solicits public comment on its proposed rule that would restore the exemption. Comments on other annual fee issues will not be entertained in connection with this proposed rule. The Commission already has received some information on the "externalized benefits" of non-power reactors and the use of licensed nuclear materials in various educational activities and related research at colleges and universities. However, the Commission is interested in more data on the benefits of non-power reactors and the use of licensed nuclear materials in education in its broadest sense, in the expectation that more data may well substantiate the argument in the petition for reconsideration that non-power reactors and the use of licensed nuclear materials in educational activities are prime examples of activities that provide "externalized benefits" warranting public support.

The Commission expects commenters to address the "externalized benefits" question by providing data on (but not limited to) the size and subject areas of classes using licensed material in studies or research, the number of faculty and students using licensed material in their studies or research, the type and availability of work for graduates of nuclear programs and other programs in which licensed nuclear materials are used, and the relation between education and research in institutions of higher learning. The Commission has particular interest in comments on the extent to which the benefits of nuclear education and other programs using licensed nuclear materials (not simply education in general) are "externalized" and would not be produced by market forces. The Commission would appreciate detailed information on the many non-nuclear fields of study that use licensed nuclear material in the course of educating their students. The Commission has received some information in letters addressing the fee policy study required by the Energy Policy Act of 1992 described above, but more data is needed for the Commission's deliberations.

This notice, of course, does not represent a final Commission decision to reinstate the educational exemption, but simply the Commission's proposed resolution of the question based on its current best information and best thinking. But, with the Commission proposing to restore a generic exemption, it is not necessary for formerly exempted educational licensees to apply for individual public interest exemptions. Therefore, the Commission requests nonprofit educational licensees not to seek such exemptions at this time. If after reconsideration, the Commission decides that it cannot justify a generic exemption, it will provide educational licensees ample time to seek individual exemptions. The Commission will hold in abeyance all individual exemption requests it already has received from educational licensees.

The issue of refunds to nonprofit educational licensees who may have paid the FY 1993 annual fee will be addressed, if applicable, in the final rule. Nonprofit educational licensees who have requested termination, downgrade, possession-only or combined licenses to avoid the FY 1993 annual fee will be advised accordingly what action, if any, is needed if they choose to rescind those applications as a result of this proposed rulemaking.

There is one final point warranting clarification. The FY 1993 final rule eliminating the educational exemption indicated that, because of the remand from the court of appeals, the Commission would issue new fee schedules retracting the exemption for FY 1991-92 and offer appropriate refunds. The Commission now proposes not to issue revised fee schedules reflecting retraction of the educational exemption because of its inclination to restore the exemption. Commenters, if they choose, may address this point.

As the final rule made clear (58 FR 38669), the Commission did not intend retroactively to charge fees to nonprofit educational institutions for FYs 1991-92, but did intend to make refunds to those licensees (power reactors) that made up the shortfall in 100 percent fee recovery created by the educational exemption. Should the Commission restore the exemption, however, no new fee schedule for FYs 1991-92 will be necessary and no refunds will be made. On the other hand, because of the timing of this reconsideration proceeding and if the Commission reinstates the educational exemption, no licensee will be assessed additional fees to make up any shortfall created for FY 1993. For future fiscal years, however, the Commission will recover from other

licensees the shortfall resulting from the educational exemption, pursuant to its current statutory mandate to recover 100 percent of its budget.

II. Section-by-Section Analysis

Section 171.11 Exemptions

Paragraph (a) of this section is amended by adding nonprofit educational institutions, as defined in § 171.5, to the list of those entities exempted from annual fees by the Commission. A discussion of this change in fee policy is found in Section I of this proposed rule.

III. 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 assessment nor an environmental impact statement has been prepared for the proposed regulation.

IV. 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 1980 (44 U.S.C. 3501 et seq.).

V. Regulatory Analysis

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). For FYs 1991 through 1995, OBRA-90 requires that approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, on July 20, 1993 (58 FR 38666), the NRC, in accordance with § 171.13, published in the Federal Register the final amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1993 budget of \$540.0 million less the amounts collected from part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(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

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

Therefore, when developing the annual fees for operating power reactors the NRC continued to consider the various reactor vendors, the types of reactor, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licensees issued to Government agencies also took account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; Appendix B, 10, 1986), was challenged in its entirety in its entirety in *Florida Power and Light Company v. United States*, 946 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989).

10 CFR part 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner v. Mid-American Pipeline Co.*, 109 S. Ct. 1236 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld recently by the U.C. Circuit Court of Appeals in *Allied-Signal v. NRC*.

VI. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule affects about 110 operating power reactors which are not considered to be small entities.

VII. Backfit Analysis

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

List of Subjects in 10 CFR Part 171

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

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. 551, the NRC is proposing to adopt the following amendments to 10 CFR part 171:

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

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

Authority: Sec. 7601, Pub. L. 94-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-201, 101 Stat. 1370, as amended by Sec. 1271, Pub. L. 101-239, 103 Stat. 2108 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. 1125, 142 U.S.C. 2214 (note).

2. In § 171.11, paragraph (a) is revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for: (1) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

- (i) Human use;
- (ii) Remuneration services to other persons;
- (iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; or
- (iv) Activities performed under a Government contract.

(2) Federally owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

- (i) Is licensed by the Nuclear Regulatory Commission under section

104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134c) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

- (A) A circulating loop through the core in which the licensee conducts fuel experiments;
- (B) A liquid fuel loading; or
- (C) An experimental facility in the core in excess of 16 square inches in cross section.

Dated at Rockville, MD, this 21st day of September 1993.

For the Nuclear Regulatory Commission:
Samuel J. Chalk,

Secretary of the Commission

Appendix To Proposed Rule—Preamble of Reconsideration of Final Rule

I. Introduction

The Nuclear Regulatory Commission ("NRC" or "Commission") has long exempted nonprofit educational institutions from paying annual fees. Although the Commission traditionally justified this exemption on the grounds that colleges and universities could not readily pass the cost of the fees on to students through tuition and other charges, a recent federal court decision questioned this rationale. The court explained, however, that the externalized benefits of education potentially supported such an exemption.

Although the Commission at first defended its educational exemption as a rulesmaking proceeding prompted by the court's decision, it abandoned the exemption in the final version of its annual fee rule. Petitioners contend that in so doing the Commission erred and respectfully request that the Commission reconsider its ruling and reinstate the exemption for nonprofit educational licensees.

II. The Allied-Signal Court Clearly Invented the Commission To Grant an Exemption to Educational Institutions

Although the decision in *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Commission*, 980 F.2d 146 (D.C. Cir. 1992), compelled the Commission to reconsider its exemption of nonprofit educational facilities, the court suggested a valid reason for exempting

¹ See 10 CFR 171.11(a) (1993).

² See *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Commission*, 980 F.2d 146 (D.C. Cir. 1992), discussed in section II, infra.

³ Id. at 154, section 2, infra.

⁴ FY 1991 and 1992 Final Rule implementing the U.S. Court of Appeals Decision and Revision of Fee Schedules 1992, Fee Recovery, FY 1993, 58 FR 36442, 28892-93 (Nuclear Regulatory Commission, July 20, 1993) ("Final Rule").

⁵ Petitioner Cornell University has submitted similar comments suggesting the exemption in response to the Commission's fee policy review. See Letter from R. Scott to Secretary and Commissioners in response to 58 FR 36442 (July 16, 1993).

educational reactor licensees from annual fees. The court merely asked the NRC to marshal a rationale based on "externalized benefits" of education "that cannot be captured in tuition or other market prices." *Id.* at 151. Indeed, the *Allied-Signal* court explained that "there is at least a serious possibility" that the Commission can "substantiate" such an exemption. *Id.*

In its Final Rule, however, the Commission missed an opportunity to consider seriously the classic "externalized benefits" argument¹⁰ proposed by the court. While Petitioners believe that the Commission should have decided to continue the exemption at issue and should have based its decision on the court's discussion and on the many comments supporting the exemption, they seek in this petition to provide the Commission with additional information about the considerable externalized benefits of nuclear reactor programs at nonprofit educational institutions.

III. Nuclear Reactors at Nonprofit Educational Institutions Provide Significant Benefits to the Commercial Nuclear Industry and the General Public

Universities, including the Petitioners, train scientists and engineers who enter the commercial nuclear industry and government regulatory agencies such as the NRC itself. Distinguished faculty, many of whom have worked in the field since its infancy, instruct the students in basic research and new technologies. Without study at educational reactors, these students would lack the knowledge and skill necessary to adequately maintain the efficiency and safety of the nuclear industry.

Nuclear engineering programs, which can thrive only by including hands-on laboratory study at a working reactor, assist the commercial nuclear industry directly through pure and applied science. Cornell researchers, for example, have analyzed the behavior of reactors under severe accident conditions. Universities contribute to the power reactor industry by developing concepts for better cooling systems, moderators, and other components of power reactors systems.

University researchers also use reactors to develop new applications of nuclear technology in fields as varied as medicine, geology, archaeology, food science, and textiles. These new research findings in turn provide opportunities for profitable commercial ventures.

By operating nuclear reactors, educational institutions assist industry and government in other important ways. They provide a source of respected, informed, and independent opinion on the benefits and burdens of nuclear technology for a society addressing its implications. Students and members of the public who tour the educational reactor facilities gain insight into the varied uses of nuclear technology and come to appreciate the contribution of nuclear industries to the quality of their lives.

The Commission itself has acknowledged its continued belief that "educational

research provides an important benefit to the nuclear industry and the public at large and should not be discouraged."¹¹ A "vibrant nuclear education sector also is important as a source of talent and ideas for the NRC itself and for the whole government," the Commission avowed in the course of its rulemaking process. *Id.* The wide array of externalized benefits generated by nuclear reactor programs at nonprofit educational institutions is thus apparent from the Commission's statements and from the many comments submitted in support of the contested exemption.

IV. Economic Theory Supports the Nonprofit Educational Exemption

The Commission's long-standing exemption for nonprofit educational facilities is wholly consistent with "externalized benefits" economic theory. As Commissioners Ramick and DePlanque explained in their opinion, "education, like national defense, (and) the administration of justice . . . provides large and indispensable benefits to the whole society, not just to purchasers." Final Rule, 58 FR at 38675. Indeed, the "exceptionally large" benefits of nuclear reactor programs at universities are recounted in section III above and in the many comments submitted to the Commission during its rulemaking process.

From ground-breaking discoveries to vital core data, university nuclear research is openly published and freely debated to ensure the highest academic standards and widest availability. Such "future knowledge is the archetypal 'public good,'"—once produced, it can be distributed widely at no incremental cost. Letter from Alfred E. Kahn to Shirley K. Sign (July 15, 1993) ("Kahn Letter") at 1. As Commissioners Ramick and DePlanque reasoned, the free market may fail "to supply the necessary amount of education" and other public goods because the "buyers" or students lack information sufficient to set the "right price" or are unable to pay that price. Final Rule, 58 FR at 38675. The inefficiency of charging for access to nonproprietary research and education thus supports what noted economist Alfred Kahn calls "the strong and universally recognized case for public financing of pure research." Kahn Letter at 1.

Kahn explains that it would be "futile for universities to try to recover the cost by charging potential users" for research and education, as well as "socially and

economically undesirable for them to do so." *Id.* Instead, he reasons, "a flat charge on business beneficiaries is superior to a specific charge by the University for particular pieces of knowledge." *Id.* The Commission's relatively small costs associated with licensing educational reactors may easily be recovered from those licensees who benefit immeasurably from the activities of the distinguished teaching and research community at our nation's universities, and those who, in the Commission's discretion, can fairly, equitably, and practically make such payments.

V. The Proposed Annual Fees Threaten Serious Injury to University Nuclear Programs

Not only is it economically inefficient to levy annual fees on university research reactors, it also places an undue financial burden on nuclear science education and threatens to chill nuclear research vital to industry and the general public alike.¹² The situation at Cornell is illustrative of these potential problems.¹³ Cornell uses two reactors for teaching and research. The larger, a 500-kilowatt TRIGA, is used most frequently. A staff of four—two engineers and two lab technicians—maintains the reactors. The annual operating budget runs approximately \$230,000.¹⁴ The proposed NRC annual fee for Cornell's reactors—\$124,200—thus represents over half of the entire reactor budget.¹⁵

Indeed, the federal government is the sole source of grant monies supporting Cornell's nuclear science and engineering programs, and federal research dollars comprise nearly half of the nuclear science and engineering department's annual research budget. The Department of Energy not only contributes substantial grant monies but also donates all of the fuel for the reactors. Cornell nuclear

¹⁰ The Commission has also suggested that it may in the future impose license and inspection fees, established under authority of the Independent Offices Appropriation Act ("IOAA"), on nonprofit educational licensees. See Final Rule, 58 FR at 38686, 16 CFR 170.11(a)(4) (1993) (imposing nonprofit educational institutions from IOAA fees). Because these fees vary with the cost of inspecting particular reactor facilities, their precise impact on Cornell and other universities is difficult to estimate. The economic and public policy rationales for exempting colleges and universities from NRC annual fees apply with equal force to IOAA fees, however.

¹¹ See Nuclear Reactor Budgets, Use, and Federal Funding at Petitioner Institutions attached as Exhibit A.

¹² Ten reactors are used primarily by three nuclear science and engineering faculty and approximately twelve graduate students per year, with additional limited use by as many as ten faculty and fifteen graduate students from fields such as geology, chemistry, medicine, and archaeology. Undergraduate teaching and demonstration, public tours, and institutional use account for almost a quarter of the reactor's total use.

¹³ A 1991 study chaired by Dr. Marcus H. Voth found that of the 27 university reactors then operating, 16 incurred annual costs below \$60,000. Letter from Marcus H. Voth and Edward H. Klevorick to Samuel J. Chitt (July 12, 1993) at 2.

¹⁴ Differing Views of Commissioners Ramick and DePlanque. Final Rule, 58 FR at 38675.

researchers receive grants from the National Science Foundation as well.¹⁴

If the Commission abandons the educational exemption, Cornell will be forced to seek increased federal grants to cover the NRC charges. Rather than accomplishing the budgetary goals of the Omnibus Reconciliation Act, Public Law No. 101-508, 104 Stat. 1388 (1990), the Commission's action will merely shift monies from one federal pocket to another. As a federal court has logically noted, "[i]t is self-evident that a transfer of funds from one agency to another fails to increase federal revenue." *Florida Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988).

If Cornell attempted to recoup the NRC fees through general tuition increases rather than through grants, all students, many of whom receive extensive financial aid from the government and private funds, would be forced to subsidize a relatively small department at the university. Alternatively, a major increase in laboratory fees imposed on nuclear science and engineering students alone would place the program utterly beyond their financial reach. Cost increases of such magnitude would make any institution's nuclear program a prime target for elimination.

Since the Commission's Final Rule seeks to collect annual charges for fiscal year 1993, it also threatens to disrupt university budgets, which have already allocated scarce resources for this year. Because of the significant lag time required for approval of grant proposals, it may take as long as two years for universities to learn whether monies necessary to cover the major expense of NRC fees will even be available. This financial stress comes as a shock to the educational community in the wake of the Commission's vigorous argument supporting the exemption in its Proposed Rule.¹⁵

Although the Commission proposes to alleviate the financial burden on colleges and universities by considering individual requests for exemption from annual fees and for installment payments, these suggestions provide small consolation. Installment payment plans fail to address the real problem confronting universities—how to pay for such annual fees at all. Furthermore, any attempt by the Commission to examine numerous individual exemption requests could consume more NRC administrative resources than a blanket educational exemption. The sheer number of universities joining in this petition underscores this concern.

¹⁴ Grants from the Atomic Energy Commission and the National Science Foundation first enabled Cornell to obtain its two reactors. See David D. Clark, *The Nuclear Frontier: Cornell's Program of Basic and Applied Research*, Cornell Eng'g Q., Spring 1992, at 1.

¹⁵ See Final Rule, 58 FR at 38675, Proposed Rule, 58 FR at 21684 ("The Commission proposes to continue to exempt those (nonprofit educational) licensees from fees for FYs 1991, 1992 and 1993, as it has for many years in the past . . . (and) continues to believe that educational research provides an important benefit to the nuclear industry and the public at large and should not be discouraged.") (citations omitted).

VI. The Educational Exemption Reflects Sound Public Policy and a Tradition of Support for Education

Given the significant benefits realized by the nuclear industry from university research and education, any additional fees imposed on commercial licensees to cover costs associated with nonprofit educational reactors are a bargain, not a burden. Commercial power reactors have historically been the only NRC licensees asked to absorb the cost of supporting educational reactors. The \$7.1 million in fiscal year 1993 costs associated with licensing nonprofit educational reactors, if divided equally among the 109 commercial power reactors now in operation, amounts to only \$65,000 per commercial reactor and adds a mere 2% to the proposed average fee for commercial reactors. See Proposed Rule, 58 FR at 21674. The costs borne by power reactor licensees could, in the Commission's discretion, be decreased somewhat by spreading them equitably among all commercial licensees.

That federal sources already support extensive nuclear research and education at both private and public institutions speaks to the national importance of this discipline. The Commission's traditional exemption for nonprofit educational facilities reflects a history of federal support for higher education reflected in universities' nonprofit tax status and exemplified by the Morrill Act, which first established land-grant colleges such as many of the Petitioners. The efforts of Congress and the NRC to reduce the federal budget deficit are praiseworthy, but only if this effort encourages growth by strengthening the nation's long-standing superiority in science and technology. In the long term, the loss of the Commission's educational exemption will blinder the advancement of nuclear science, the nuclear industry, the NRC itself, and the national interest.

VII. Conclusion

For the foregoing reasons, Petitioners request that the Commission reconsider its Final Rule and reinstate its annual fee exemption for nonprofit educational institutions.

Respectfully submitted,

By: _____
Cornell University,
Shirley K. Egan,
Associate Counsel, Cornell University, 500
Day Hall, Ithaca, NY 14853-2801.

By: _____
Counsel for Cornell University,
Joseph C. Bell, Melissa R. Jones,
Hogan & Hartson, 555 Thirteenth Street, NW,
Washington, DC 20004-1109.

By: _____
Kansas State University,
Jennifer Kasebaum,
Assistant University Attorney, Kansas State
University, 111 Anderson Hall, Manhattan, KS
66508-0715.

By: _____

Manhattan College,
Walter Matyslik,
Assistant Provost, Manhattan College, 4513
Manhattan College Pkwy., Bronx, NY 10471.

By: _____
Massachusetts Institute of Technology
George H. Dummer,
Director, Office of Sponsored Programs,
Massachusetts Institute of Technology, 77
Massachusetts Avenue, room 4-110,
Cambridge, MA 02139.

By: _____
North Carolina State University,
Dr. Larry Monteith,
Chancellor, North Carolina State University,
A. Halladay Hall, Box 7001, Raleigh, NC
27695-7001.

By: _____
Reed College,
Steven Kublik,
President, Reed College, 3203 Southeast
Woodstock Blvd., Portland, OR 97202.

By: _____
University of Rhode Island,
Louis J. Saccoccio,
Assistant Legal Counsel, Carloti
Administration Bldg., Office of the General
Counsel, University of Rhode Island,
Kingston, RI 02881.

By: _____
The Board of Trustees of The University of
Illinois,
Donald A. Henas,
Associate University Counsel, University of
Illinois, Suite 258, Henry Administration
Bldg., 506 South Wright Street, Urbana, IL
61801.

By: _____
The Curators of the University of Missouri,
Phillip J. Hoskins,
Counsel, University of Missouri System, 227
University Hall, Columbia, MO 65211.

By: _____
University of New Mexico,
Charles N. Estes, Jr.,
University Counsel, University of New
Mexico, 150 Scholes Hall, Albuquerque, NM
87131.

By: _____
The University of Texas System,
Robert Ciddings,
Attorney, The University of Texas System,
201 West Seventh Street, Austin, TX 78701.

By: _____
University of Utah,
Williams T. Evans,
Educational Division Chief, Utah Attorney
General's Office, Beneficial Life Tower, 11th
Fl., 30 South State Street, Salt Lake City,
UT 84111.

Service may be made upon:
Joseph C. Bell, Melissa R. Jones,
Hogan & Hartson, 555 Thirteenth Street, NW,
Washington, DC 20004-1109, Counsel for
Cornell University.

Dated: July 30, 1993.

Exhibit 1

July 15, 1993.

Ms. Shirley K. Egan,
Associate University Counsel, 500 Day Hall,
Cornell University, Ithaca, NY 14853

Dear Ms. Egan: Your draft of a possible submission to the NRC captures most of the argument that I and, I am sure, the Circuit Court had in mind.

There is one observation you make, however, that I think can usefully be expanded, and it is an argument that anyone familiar with the literature on externalities would quickly appreciate. It has to do with the social benefits of the non-proprietary pure research to which you allude, and of the associated practice of not charging possible users for access to the knowledge that it produces.

Pure knowledge is the archetypal "public good," in economic terms, the essential characteristic of which is that, once

produced, it can be made available more and more widely at zero incremental cost. This means that it is inefficient to charge people for access to it.

That fact, taken together with the difficulty of the producer of pure knowledge appropriating the benefits of it in charges to potential users—because those benefits are largely unpredictable—together make the strong and universally recognized case for public financing of pure research. The University's policy, which you do correctly emphasize, of conducting research on a non-proprietary basis is therefore—as you clearly imply but do not, I think, stress adequately—socially highly desirable, and it would be both futile for universities to try to recover the cost by charging potential users and socially and economically undesirable for them to do so.

This does not answer the question of who should pay the charges in question: on this

I have nothing to add to your statement, except to point out that recovery in the form of a flat charge on business beneficiaries is superior to a specific charge by the University for particular pieces of knowledge.

I urge you to consider expanding the argument slightly along these lines, mainly because I think I can assure you that anyone who raises the possible consideration of externalities will be receptive to such an expansion to enunciate the concept of public goods.

I've taken the liberty of correcting a few minor errors on the draft you sent me and raising one or two minor specific questions.

Please call on me if you think I can be of any additional assistance.

With best regards,

Sincerely,

Alfred Kahn

EXHIBIT A—NUCLEAR REACTOR BUDGETS, USE, AND FEDERAL FUNDING AT PETITIONER INSTITUTIONS

Institution	Annual reactor operating budget (dollars)	Proposed NRC annual fees (dollars)	No. persons using reactor (faculty/grad. students/undergraduates)	Percentage of dept. budget from federal sources (per cent)
Cornell Univ.	\$240,000	124,200	3F/12G	52.
Kansas State Univ.	134,462	62,100	4F/7G/30U	67.
Manhattan College	15,000	62,100	3F/20G/30U	Not Available. ⁵
MLT	\$270,000	62,100	35F/60G/63U	63.
N. Carolina State Univ.	435,000	62,100	6F/50G/17U	25.
Reed College	60,908	62,100	8F/8G/13U	33.
Univ. Illinois-Urbana	\$200,000	124,200	4F/14G	75.
Univ. Missouri-Rolla ⁴	108,350	62,100	6F/12G/38U	Not Available.
Univ. New Mexico	27,000	62,100	8F/22G/25U	89.
Univ. Rhode Island	533,769	62,100	22F/12G	85.
Univ. Texas-Austin	267,183	62,100	4F/11G	100.
Univ. Utah	50,000	62,100	6F/16G/7U	48.

¹ Combined figure for the two reactors at Cornell.

² Facility operates at a deficit of \$650,000.

³ Combined figure for the two reactors at Illinois-Urbana.

⁴ Data from the Rolla campus reactor only.

⁵ Total 1992 federal grants for the Department equaled \$40,908.

Exhibit B**Nuclear Reactor Programs at Petitioner Institutions****Cornell University**

In its 30 years of operation, the Cornell TRIGA has been used extensively in undergraduate and graduate courses and research by non-specialists. In one project, neutron-induced autoradiography is used to map the location of specialized pigments to reveal images in the successive layers painted by artists as a painting evolves from preliminary sketch to final version. This non-destructive technique allows the art historians to infer the artist's developing intentions. In another, neutron radiography is used to study the distribution of water between soils and the roots of living plants. Neutron activation analysis is widely used in archaeology to characterize elemental compositions of articles such as pottery sherds and obsidian and metallic artifacts. Sufficient differences in elemental composition among clay sources distinguish local wares from imported ones. The effectiveness of detergents has been

studied by determining residues of labeled oils on treated specimens. Nuclear methods of characterization for trace elements have been a key to resolving many materials quality issues for silicon semiconductor device fabrication.

Cornell has the only cold neutron beam program at a university reactor in the United States.

Additional nuclear methods that will shortly come into use at Cornell include prompt gamma-ray neutron activation analysis and neutron depth profiling based on monoenergetic conversion electrons produced by neutron reactions as well as the familiar method based on alpha particle or proton production.

Kansas State University

The program at Kansas State is valuable to institutions without research and teaching reactors. The school's reactor, under the Department of Energy Reactor Sharing program, is used by 13 different institutions, including Stanford, Louisiana State, the University of Southern California, and the

National Transportation Safety Board. Within the University, the reactor is used mostly by chemistry students, followed by nuclear engineering students. Research is conducted in a wide range of fields including geology, biology, animal sciences, textiles, and grain sciences.

Manhattan College

The college's teaching and research reactor program is private and primarily undergraduate. It is very small but economically run. As the only teaching and research reactor in the metropolitan New York area available to educational institutions, it provides a significant resource for the area. Three to four area institutions of higher learning regularly use it for teaching and research. Colleges such as New York Maritime College would otherwise have no access to such a facility. In addition, hundreds of area high school and middle school students enjoy tours and demonstrations at the reactor each year as part of their science curriculum. The school district in which the college is located has

the highest proportion of minority students of any community school district in New York City, and among the highest in the nation.

Massachusetts Institute of Technology

A large research program is carried out at the MIT Research Center in Nuclear Reactors, in which pressurized loops that simulate both PWR and BWR systems have been constructed and operated in the core of the reactor for the purpose of identifying coolant chemistries that will minimize corrosion. (2) *Irradiation-Assisted Stress Corrosion Cracking* to investigate the formation and growth of cracks in reactor structural alloys; (3) testing the efficacy of in-core sensors, known as the *SENSOR Project*, involving in-core sensors that detect changes in electrochemical potential (ECP) and the effect of water chemistry additives on the halting of crack growth; and (4) *Digital Control* to develop and experimentally verify a generic methodology for the closed-loop digital control of neutron power, core temperature, and other plant parameters. In over a decade of work, results have included demonstration of signal validation, the development of a supervisory controller using reactivity constraints, a rule-based controller, closed-form laws for the time-optimal trajectory-tracking of reactor power, the on-line reconfiguration of control laws, automated power increases from subcritical, and the use of various forms of feedback. Parallels between control strategies for reactors characterized by spatial dynamics and control of multi-modular reactors have also been studied.

Space Science also benefits from the Research Center with studies to determine the feasibility of low-temperature annealing of radiation-induced defects in electronic components such as will be used on a spacecraft for interplanetary missions of several years duration, and an upcoming study to investigate thermionic energy conversion in spacecraft reactors.

Neutron activation analysis and track-etch techniques are being used in Earth Sciences to investigate fundamental questions about the earth from meteorite composition, lava characteristics, and crack growth in granitic rock to continental drift. Neutron activation is also being used to study the movements and trace the origins of atmospheric pollutants.

North Carolina State University

Since 1973 the university's reactor has been used to support "Research Reactor Training" for local utilities' training of licensed reactor operators. Newly available in 1990 are training programs for individuals in the industrial community, such as engineers, supervisors, and maintenance personnel, to strengthen their understanding of how a power reactor operates. Representative of the research uses of the university's reactor are the (1) *Irradiation of Reactor Vessel Steels Project* for long term irradiation performed in specially designed baskets in the reactor, a project seeking a better understanding of degradation of the physical properties of steel in the reactor vessels at nuclear power plants;

(2) *Synergistic Effects on Carbon Limiters Project* to assess synergistic effects of both neutron exposure and ion bombardment to carbon limiters in fusion reactors by providing long term irradiation of carbon samples; (3) *Neutron Activation Analysis* in many quantitative analysis needs such as environmental monitoring, forensic and criminal work, certification of material purity, rare-earth tagging for study of marine larval dispersion, analysis of mercury in fish tissue, analysis of fossil power plant reservoirs for selenium, and industrial tagging; and (4) *Neutron Depth Profiling Project* consisting of characterization studies of boron-doped glass films on silicon wafers.

Reed College

Reed College is the only educational institution in the United States to operate a reactor without a graduate or engineering program. Although under the Chemistry Department, the reactor is used by six faculty for classes in physics, natural science, and art history, as well as chemistry. Undergraduate and faculty research involves about 5 students each year, however, in the last 2 years approximately 20 faculty members from 11 additional colleges and universities have used the reactor facility for classes or research in the fields of biology, chemistry, physics, environmental science, forensic science and history. Each year as many as 20 high school students use the facility for classes and research. A non-credit, semester seminar series on "reactor, radiation and the environment" is offered to the public. Between 30 and 50 people attend it each year, two-thirds of them not affiliated with Reed College.

University of Illinois-Urbana

The University of Illinois Nuclear Reactor Laboratory is a two-reactor facility, using the Advanced TRIGA and LOPRA reactors. Neutron Activation Analysis, materials damage studies and nuclear pumped laser research are the research foci of the facility, in addition to its teaching goals.

University of Missouri-Rolla

The primary uses of the reactor at the Rolla campus of the University of Missouri are education and training of graduate and undergraduate students and nuclear-related research. The reactor is used mostly by students from the fields of nuclear engineering, chemistry, life science, and physics. In addition, about 340 students and instructors from other institutions use the reactor through the University Reactor Sharing Program.

University of New Mexico

Four research projects have been carried out using the AGN-201M reactor over the past seven years. One of the major research projects involves measurement of basic physics parameters in a highly thermal system. No other thermal facility system has the flexibility and low intrinsic source strength required for this research. This feature is unique to the university facilities. A second project is a small sample reactivity measurement technique that is being applied to geologic samples to determine their thermal neutron cross sections and relative

water content. This work has application in both the oil well core logging industry and in the waste disposal area. In a third project, foils of different materials are activated to determine their responses to thermal neutrons and to analyze content, particularly with respect to impurities that may be present. A recent doctoral research project examined the role of fuzzy logic controllers in nuclear reactor control. The conclusion was that fuzzy logic controllers appear to be feasible and useful when applied to rod positioning and timing.

University of Rhode Island

Rhode Island Nuclear Science Center has a long history of conducting environmental research. The University of Rhode Island Graduate School of Oceanography uses the reactor to perform neutron activation analysis on environmental samples collected from locations all over the globe. Important research discoveries in acid rain, geology and environmental pollution have been achieved over the years because of the availability of the reactor. The URI physics department conducts extensive neutron scattering experiments at the reactor and usually has several post-doctoral researchers at the facility on a full time basis. As the only nuclear facility in the state, RINSC provides a significant number of tours to students from high schools and universities. The positive uses of nuclear technology in environmental and materials research can be observed on a first hand basis.

University of Texas

Research currently under way at the Nuclear Engineering Teaching Lab includes the (1) *Texas Cold Neutron Source Project* for the development of a neutron source with low neutron energies for research in prompt gamma activation and scattering; (2) *Neutron Depth Profiling Project* for the measurement of boron and other (n,α) reactions to determine depth concentrations in various materials such as glass and silicon; (3) *Neutron Capture Therapy Project* for measurements of the dose to head phantoms from the neutron activation of gadolinium; (4) various *Neutron Activation Projects* in support of investigators, including irradiation of biological fluids, geological samples, and others; and (5) *Digital Reactor Control Project* for the development of an artificial intelligence software tool to provide software functional diversity.

University of Utah

The program at the University of Utah is multidisciplinary in nature, allowing researchers in a variety of fields to discover the potential of reactor use. The reactor is used mostly by nuclear engineers, mechanical engineers, chemical engineers, and electronic engineers.

[FR Doc. 93-23836 Filed 9-28-93; 8:45 am]
BILLING CODE 7000-01-P

ROB PORTMAN
Second District, Ohio

Committees:
Small Business
Government Operations
Leader's Economic Task Force

Congress of the United States
House of Representatives
Washington, DC 20515-3502

September 21, 1993

Washington Office
238 Cannon Office Building
Washington, DC 20515
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1-800-784-6366

Mr. Ivan Selin
Chair
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Selin:

I recently received a letter from one of my constituents, Dr. Terrance P. Toepker, that I want to bring to your attention. He is concerned about a recent N.R.C. decision to no longer exempt academic institutions from N.R.C. fees.

I would appreciate it if you would review his concerns and let me know your response as soon as possible. If you have any questions about this matter, don't hesitate to contact me.

I look forward to hearing from you.

Sincerely,


Rob Portman
Representative

RP/cw
Enclosure

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PDR PR
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PRINTED ON RECYCLED PAPER



103235

Physics Department

September 9, 1993

Honorable Rob Portman
238 Cannon HOB
Washington, DC 20515

Dear Congressman:

As you are probably aware, the Nuclear Regulatory Commission has voted to remove the exemptions from fees for all academic institutions.

This will have the net effect of closing many programs of study involving nuclear physics and nuclear energy. The annual fee assessed to Xavier of \$23,160 would certainly have that effect. This is more than the annual operating budget for our department.

For your information, I have enclosed a copy of a letter which I sent to the N.R.C. dated August 17, 1993. I have also included a copy of an article from Science (Aug 6, 1993).

At a time when the news is full of reports that many countries are increasing their nuclear capabilities, both weapons and energy production, it seems unwise to force academic institutions in the United States of America to close their programs.

Your help is requested in order to reverse this N.R.C. decision.

I would like to hear from you as soon as possible, since the N.R.C. actions came as a bombshell to us.

Thank you for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Terrence P. Toepker".

Terrence P. Toepker
Professor

TPT:mlk

enclosures

Cincinnati's Jesuit University

3800 Victory Parkway
Cincinnati, Ohio 45207-4111
513/745-3626

August 17, 1993

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Branch

Gentlepersons:

Following the receipt on August 17, 1993 of the copy of the Federal Register, dated July 22, 1993, I am submitting the following written comments concerning the new NRC Fee Policy.

1. We were informed in a telephone conversation with an NRC representative on August 4, 1993 that our annual fee is \$23,160. To date one bill has been received (\$8,840). The second one has not been received. These annual fees exceed the entire annual operating budget for our department.
2. In the reversal of policy from April 19, 1993 to July 20, 1993, the Commissioners seem to have decided to "close up" any small programs. Perhaps this is not an explicit agenda. However, if the fees are not removed or significantly reduced, our only alternative is to drop our nuclear physics program as it currently exists.
3. Our entire program operates at an undergraduate level. In all four years, we have about forty students. During their studies, they take a lecture and laboratory course in nuclear physics. They also go to Ohio State University for a full day of reactor experiments. In addition, two days are spent at Oak Ridge Associated Universities Laboratories in Oak Ridge, TN.
4. A number of our graduates have become officers in the nuclear Navy. Following their military time, many of them have become employees in the nuclear power industry. One of our graduates currently works in research for NRC. Also, many summer workshops for area teachers are presented by our department. Usually one component will involve probability and statistics with a radioactive decay laboratory experience as a model. All of these benefits would be lost if our current program is required to close.

9308306659

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

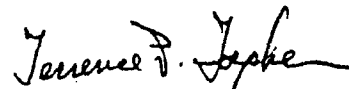
Page 2

5. As a final comment, we suspect that many schools similar in size to ours, will also be forced to close their programs. While the impact of one small school closing would be small, many closing would have a serious national impact.

For these reasons, we ask that the NRC Commissioners reconsider their rule published in the Federal Register on July 20, 1993, and reestablish the education exemption.

If there are any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terrence P. Toepker".

Terrence P. Toepker
Professor

TPT:mlk

NUCLEAR PHYSICS

Surprise Fees Leave U.S. Research Reactors Gasping

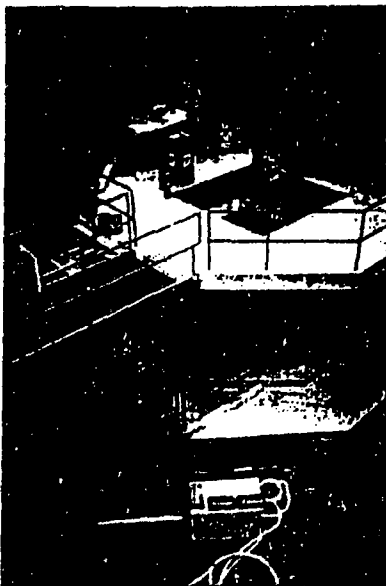
The operators of research reactors in the United States got a nasty shock late last month: huge bills from Uncle Sam, due on 30 September, that may force as many as half of the reactors to shut down permanently. The bills—\$62,000 per reactor to cover licensing costs—were sent out by the Nuclear Regulatory Commission (NRC) with little advance notice, and the move has sent reactor operators into crisis mode. A dozen universities last week filed an appeal with the NRC, but the commission says it was forced by a federal court decision to impose the fees and has little choice in the matter.

For many research reactors, this bombshell is the latest in a series of blows that have already left them struggling financially. Since their heyday in the 1960s and 70s, nuclear reactors at universities have come under fire on safety grounds, while nuclear engineering programs have shrunk as the nation turned its energy priorities away from nuclear power. Of the 38 reactors now operating on U.S. campuses, all but two have annual operating budgets under \$1 million, and most are below \$300,000. For a facility such as Cornell's Ward Laboratory, which houses two reactors and has an annual budget of \$240,000, the arrival of an unexpected bill for \$124,000 was "pretty much of a body blow," says director David Clark. At Massachusetts' Worcester Polytechnic Institute, whose research reactor supports about 30 nuclear engineering students on a \$100,000 annual budget, the new \$62,000 fee "puts us in a very difficult position," says director Leo Bobek. "What it's going to do to many of the small reactors is force them to close." He estimates that the NRC decision could kill as many as 28 research reactors nationwide.

That would be a shock for more than just the reactor community. Research reactors are used as a resource in dozens of disciplines, including neutron activation analysis of pollutants and geological samples, neutron capture therapy for cancer, the production of radioisotopes for medical research, and radiation testing of electronic components, as

"It would be a very heavy blow," he says.

This threat to research comes from a 1990 law that requires the NRC to pay for itself entirely through "user fees," mostly by charging reactor operators the cost of licensing their facilities. Until now, the NRC has exempted research reactors on the grounds that universities, unlike commercial utilities, had no way to pass along the fees to their users. But last year Allied Signal Inc., a company that processes uranium hexafluoride for reactors, sued the NRC, claiming it, too, should be exempted from paying fees because if it had to pass along the increased costs to its customers it would be unable to compete with international companies that don't pay such fees. The court rejected that argument, but in doing so, it also rejected the whole concept of "passthrough" as the rationale for the NRC fees, on the grounds that it is impossible to calculate accurately the eco-



Splitting headache. Oregon State's reactor is among those hit with new fees.

University officials believe they can demonstrate such benefits, but NRC decided it couldn't risk another lawsuit and decided to apply the new fee rules immediately. In a final rule published in the 20 July *Federal Register*, the NRC said the court ruling left it no option but to collect fees in the 1993 fiscal year, which ends on 30 September. NRC's move "caught us virtually blindsided," says Arthur Johnson, director of Oregon State University's radiation center. "We suddenly learned that we were going to get these huge bills, that the comment period had closed, and we were up the creek." Combined with other new NRC charges, the licensing fees could push the annual regulatory cost of operating a research reactor over \$100,000, he says.

The decision to demand payment now was controversial inside NRC itself. In an unusual dissent to the *Federal Register* announcement, two of the five NRC commissioners protested that many research reactors may not survive long enough to make the case for an exemption on grounds of "externalized benefits." "We fear...the country may lose the considerable benefits [that] the nuclear-related activities of education institutions provide," the dissenting commissioners wrote.

Reactor operators have gone on red alert to try to get NRC to withdraw the 1993 bills. Last week's appeal, spearheaded by Cornell and signed by 11 other universities, asks the NRC to reconsider the final rule in light of the devastating effect it could have on research reactor operations. And Worcester Polytechnic's Bobek is taking a leaf from the antinuclear movement's book: He's preparing to challenge the rule on the grounds that it should not have been issued without an Environmental Impact Assessment. If reactors are forced to close, Bobek argues, their radioactive material will have to be disposed of. So far, however, the commission has said only that it will consider case-by-case requests for an exemption this year, and it warned that "severe financial hardship as well as significant externalized benefits" must be demonstrated to win a stay.

As for the future, an NRC spokesman says the commission "would be happy to find a basis for extending the research exemption." The NRC, he says, doesn't want to shut down research facilities any more than the researchers do. The reactor operators are hoping that Congress will come to the rescue. They are planning to mount a lobbying

CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Letter to Rep. Bohner
2. TYPE OF DOCUMENT ☒ Correspondence ☐ Hearings (Qs/As)
3. DOCUMENT CONTROL ☐ Sensitive (NRC Only) ☒ Non-sensitive
4. CONGRESSIONAL COMMITTEES and SUBCOMMITTEES (if applicable)

_____ Congressional Committee
_____ Subcommittee

5. SUBJECT CODES

- (a) _____
- (b) _____
- (c) _____

6. SOURCE OF DOCUMENTS

- (a) _____ 5520 (document name _____)
- (b) _____ Scan- (c) _____ Attachments
- (d) _____ Rekey (e) _____ Other _____

7. SYSTEM LOG DATES

- (a) 4/15/73 Date OCA sent document to CCS
- (b) _____ Date CCS receives document
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- (d) _____ Date resubmitted by OCA to CCS
- (e) _____ Date entered into CCS by _____
- (f) _____ Date OCA notified that document is in CCS

8. COMMENTS 29002



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

July 25, 1994

The Honorable Rob Portman
United States House of
Representatives
Washington, DC 20515

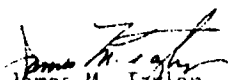
Dear Congressman Portman:

This is in response to your letter of June 28, 1994, to Dr. Bill M. Morris, in regard to a letter from your constituent Diana Salisbury. As you are aware, Dr. Morris and his staff have been in contact with Ms. Salisbury concerning the rulemaking we are currently conducting to develop standards for certification of the gaseous diffusion plants in Portsmouth, Ohio and Paducah, Kentucky.

The Energy Policy Act of 1992 (the Act), signed into law on October 24, 1992, requires that the Nuclear Regulatory Commission (NRC) promulgate health and safety standards within 2 years after enactment of the legislation. The NRC will then certify the 2 operating gaseous diffusion plants against those standards. The proposed regulations on this subject were published in the Federal Register on February 11 of this year, with 60 days allowed for public comment. The Commission is required by the Act to complete action on certification rulemaking by October 24, 1994.

Ms. Salisbury commented to the Office of the Secretary to the Commission on the proposed regulations in a timely manner with issues similar to those she raised in her letter to you. These comments are being considered in developing the final rulemaking package which is for Commission action. When this rulemaking is completed a copy will be sent to Ms. Salisbury in her status as a commenter on the proposed rule. The statement of considerations which accompanies the Commission's final rule action will address the issues raised in her letter to you, as well as the other comments we received during the public comment period.

Sincerely,


James M. Taylor
Executive Director
for Operations

9408100135 940725
PDR PR
19 59FR6792 PDR

cc: 57

F/7

ROB PORTMAN
Second District, Ohio

Committees
Small Business
Government Operations
Leaders Economic Task Force

Congress of the United States
House of Representatives
Washington, DC 20515-3502

June 28, 1994

Washington Office:
238 Cannon Office Building
Washington, DC 20515
(202) 225-3164

Kenwood Office:
8044 Montgomery Road
Room 540
Cincinnati, OH 45236
(513) 791-0381

Batavia Office:
350 East Main Street
Batavia, OH 45103
(513) 732-2948
1-800-784-6366

Mr. William M. Morris
Director
Division of Regulatory Applications
Office of Nuclear Regulatory Research
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Morris:

Enclosed is a letter I received from a constituent regarding the Nuclear Regulatory Commissions proposed regulations on the certification of gaseous diffusion plants in Portsmouth, Ohio and Paducah, Kentucky.

I would appreciate it if you would address her concerns and then respond to me. I will then contact her with your reply.

Thank you very much for your attention to this matter.

Sincerely,

Rob Portman
Representative

RP/sw

Enclosure

EDO --- 010268

9408100141 940725
PDR PR
19 59FR6792 PDR

Sycamore Valley Environmental Awareness Group

Diana Salisbury
7019 Ashridge-Arnheim Rd.
Sardinia, Ohio 45171

JUN 15 1994

June 14, 1994

JUN 15 1994

The Honorable Rob Portman
Attention: Allen Freeman
360 East Main Street
Batavia, Ohio 45103

Dear Congressman Portman:

I am enclosing the response of the Nuclear Regulatory Commission in regard to reopening the public comment period on the agency's proposed rulemaking on the Portsmouth and Paducah Gaseous Diffusion uranium enrichment plants.

The NRC's primary concern in this matter is to meet the October 1994 final rule deadline mandated by Congress. The NRC has not historically, nor is it presently, placing the protection of the public health or the environment as its primary consideration.

Citizens living in close proximity of these facilities have valid reasons for concern for their health and safety.

1. The NRC has no mechanism for enforcement of its standards. It sets "operational goals" with the implication that U.S.E.C. will not meet these goals for a period of years.
2. The "operational goals" set by the NRC are far less than the 100 M.REM standard used by both the NRC and EPA to protect the general public from adverse health effects from radiation exposure. The 25 REM standard proposed in 10 CFR 76 is the criteria used by the NRC in SITING A NUCLEAR REACTOR (emphasis added). This siting criteria allows the public to be placed at risk 25 times that allowed for the general public and has no means of enforcement if dosage exceeds even that "goal."
3. The NRC rules do not address environmental contamination presently on or off site. The position of both the NRC and U.S.E.C. place this responsibility with the Department of Energy upon COLD SHUT DOWN of the plants. The present risks to the public should not be avoided by threat of plant closure and economic blackmail of the plant workers and surrounding communities dependent upon this facility.

Diana Salisbury
page 2

4. The NRC has no funds or mechanism for clean up of these facilities. Contaminated plumes move on the surface of the Portsmouth site. A small, shallow aquifer on site is known to be contaminated according to the DOE's own reports. The plant itself is sited on a large aquifer and risks contamination of the public drinking supply of surrounding communities. In 1978, 1,500 pounds of uranium was "lost" in the Scioto River and 22,000 pounds left the site as an airborne plume.

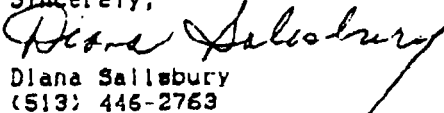
5. The health of the public is being placed at risk presently and this policy will continue under the proposed NRC rules. The surrounding community shows high cancer rate, birth defects, deaths of farm animals on lands adjoining the site, and streams with no life.

Please use the influence of your office to place this site under the supervision of the U.S. EPA which has powers of enforcement, standards that are protective of the public health, and funding for clean up of contaminated sites.

No agency time constraint should be used as justification to allow these public health and safety and environmental issues to be further ignored. The region of these facilities has borne the burden for the security and defense of the nation for the past forty years. It is time for the Congress and the agencies to openly address the true cost of the burden upon this region and its people and attempt to remediate serious, long term problems created for the greater societal benefit. We do not need development nearly so much as we need openness and clean up.

Thank you for the many courtesies your office has shown my concerns. Please assist us in this matter, we are in need of the Congressman's help.

Sincerely,


Diana Salisbury
(513) 446-2763

cc: Thomas Grumbly, Assistant Secretary, U.S. Department of Energy

enclosures



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

JUN 2 1994

Diana Salisbury
7019 Ashridge Arnheim Road
Sardinia, Ohio 45171

JUN 15 1994

Dear Ms. Salisbury:

The Nuclear Regulatory Commission has received your letter requesting a reopening of the public comment period on NRC's proposed regulations on the certification of gaseous diffusion plants in Portsmouth, Ohio and Paducah, Kentucky.

The Nuclear Regulatory Commission has decided not to extend the formal public comment period on its proposed standards for the U.S. Enrichment Corporation's operation of uranium enrichment plants leased from the Department of Energy. However, since several requests have come in to allow further comment and since the NRC staff has not completed its review of public comments received thus far, it is prepared to consider additional comments until such time, in mid-July, when it plans to make recommendations to the Commission. The additional comments will be assessed to the extent possible by time constraints.

The Energy Policy Act passed on October 24, 1992, requires the NRC to issue appropriate public safety and health standards for the plants within 2 years. Due to this congressionally mandated deadline, there is insufficient time to formally reopen the public comment period.

Proposed regulations on this subject were published in the Federal Register on February 11 of this year, with 60 days allowed for public comment. Interested persons were invited to submit written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Any additional comments should be sent to the same address.

I have enclosed to this letter a copy of a news release concerning the rulemaking which was issued on May, 25, 1994, and a copy of the proposed rule as published in the Federal Register on February 11, 1994.

Sincerely,

Bill M. Morris

Bill M. Morris, Director
Division of Regulatory Applications
Office of Nuclear Regulatory Research

Enclosures:

1. News Release
2. Federal Register Notice

94062000000

7019 Ashridge Arnheim Road
Sardinia, Ohio 45171

June 13, 1994

Bill M. Morris, Director
Division of Regulatory Applications
Office of Nuclear Regulatory Research
Nuclear Regulatory Commission
Washington, D.C. 20565-0001

Dear Director Morris:

Thank you for your response to my request to reopen the public comment period on the Portsmouth and Paducah Gaseous Diffusion Plants leased by U.S. Enrichment Corporation from the Department of Energy.

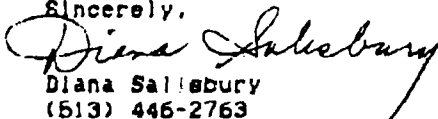
I am most concerned that under the proposed regulations, the Portsmouth facility will take years to come into compliance. During this time, the health and safety of the facility's workers, the surrounding community, and the public within a several mile radius will not be adequately protected. The NRC's use of "operational goals" rather than enforceable standards avoids violation of proposed NRC regulations by U.S.E.C., but does not protect the public when safety standards are not met. The proposed use of "operational goals" creates a loophole that leaves the public at considerable risk.

I appreciate the time constraint imposed upon your agency by Congressional mandate, however this mandate should not allow the health and safety of citizens to become less than of primary consideration to both your agency and Congress.

I will most definitely express my concerns in greater detail to Docketing and Service Branch for consideration in this most important issue.

Thank you for your assistance and courtesy.

Sincerely,


Diana Salisbury
(513) 446-2763

cc: United States Senator John Glenn
United States Senator Howard Metzenbaum
United States Congressman Rob Portman
United States Congressman Ted Strickland

9407150091

**CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST**

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_____ Subcommittee
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(b) _____ Scan- (c) _____ Attachments
(d) _____ Rekey (e) _____ Other _____
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8. COMMENTS _____

March 10, 1999

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is to inform the Subcommittee that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

Original signed by DKRathbun

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Senator Bob Graham

000000

Distribution:

DIR RF DCD (SP07) PDR (YES)
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Ohio File *Identical letters sent to the
attached listing.

DOCUMENT NAME: G:\RLB\OHCONG.WPD

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DATE	02/25/99	02/25/99	02/23/99	02/10/99

OSP FILE CODE: SP-NA-15

9904060142 990310
PDR STPRG ESGOH
PDR

NRC FILE CENTER COPY

1-7/8

IDENTICAL LETTERS TO:

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D. C. 20515

cc: Representative Ralph M. Hall

Ohio Congressional Delegation

Senators

The Honorable Mike DeWine
The Honorable George V. Voinovich

Representatives

The Honorable Steve Chabot
The Honorable Rob Portman
The Honorable Tony P. Hall
The Honorable Michael G. Oxley
The Honorable Paul E. Gillmor
The Honorable Ted Strickland
The Honorable David L. Hobson
The Honorable John A. Boehner
The Honorable Marcy Kaptur
The Honorable Dennis J. Kucinich
The Honorable Stephanie Tubbs Jones
The Honorable John R. Kasich
The Honorable Sherrod Brown
The Honorable Thomas C. Sawyer
The Honorable Deborah Pryce
The Honorable Ralph Regula
The Honorable James A. Traficant, Jr.
The Honorable Bob Ney
The Honorable Steven C. LaTourette



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

March 10, 1999

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is to inform the Subcommittee that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is to inform the Subcommittee that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", written over a horizontal line.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20453-0001

March 10, 1999

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

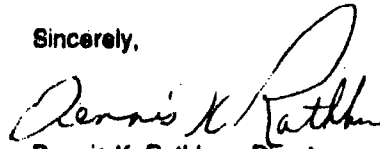
Dear Mr. Chairman:

This is to inform the Subcommittee that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Representative Ralph M. Hall



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

March 10, 1999

The Honorable Mike DeWine
United States Senate
Washington, DC 20510

Dear Senator DeWine:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable George V. Voinovich
United States Senate
Washington, DC 20510

Dear Senator Voinovich:

A proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended, was submitted by you, as Governor on behalf of the State of Ohio, by letter dated June 22, 1998.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over a light-colored background.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable Steve Chabot
United States House of Representatives
Washington, DC 20515

Dear Congressman Chabot:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable Rob Portman
United States House of Representatives
Washington, DC 20515

Dear Congressman Portman:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20455-0001

March 10, 1999

The Honorable Tony P. Hall
United States House of Representatives
Washington, DC 20515

Dear Congressman Hall:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable Michael G. Oxley
United States House of Representatives
Washington, DC 20515

Dear Congressman Oxley:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Paul E. Gillmor
United States House of Representatives
Washington, DC 20515

Dear Congressman Gillmor:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Ted Strickland
United States House of Representatives
Washington, DC 20515

Dear Congressman Strickland:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is positioned above the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable David L. Hobson
United States House of Representatives
Washington, DC 20515

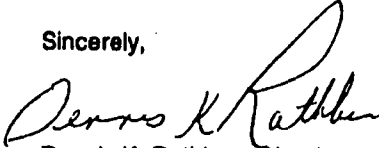
Dear Congressman Hobson:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable John A. Boehner
United States House of Representatives
Washington, DC 20515

Dear Congressman Boehner:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Marcy Kaptur
United States House of Representatives
Washington, DC 20515

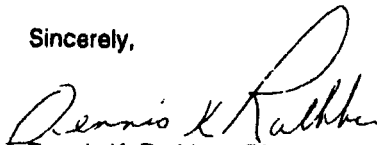
Dear Congresswoman Kaptur:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Dennis J. Kucinich
United States House of Representatives
Washington, DC 20515

Dear Congressman Kucinich:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable Stephanie Tubbs Jones
United States House of Representatives
Washington, DC 20515

Dear Congresswoman Jones:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable John R. Kasich
United States House of Representatives
Washington, DC 20515

Dear Congressman Kasich:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over a horizontal line.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
March 10, 1999

The Honorable Sherrod Brown
United States House of Representatives
Washington, DC 20515

Dear Congressman Brown:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Thomas C. Sawyer
United States House of Representatives
Washington, DC 20515

Dear Congressman Sawyer:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Deborah Pryce
United States House of Representatives
Washington, DC 20515

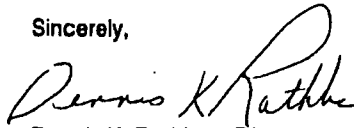
Dear Congresswoman Pryce:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



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

March 10, 1999

The Honorable Ralph Regula
United States House of Representatives
Washington, DC 20515

Dear Congressman Regula:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is positioned above the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20455-0001

March 10, 1999

The Honorable James A. Traficant, Jr.
United States House of Representatives
Washington, DC 20515

Dear Congressman Traficant:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable Bob Ney
United States House of Representatives
Washington, DC 20515

Dear Congressman Ney:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 10, 1999

The Honorable Steven C. LaTourette
United States House of Representatives
Washington, DC 20515

Dear Congressman LaTourette:

This is to inform you that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the Federal Register. A pre-publication copy of the Federal Register Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, reading "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

NUCLEAR REGULATORY COMMISSION

State of Ohio: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Ohio

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of Ohio.

SUMMARY: By letter dated June 22, 1998, former Governor George V. Voinovich of Ohio requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act). Under the proposed Agreement, the Commission would give up, and Ohio would take over, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of an assessment by the NRC staff of the Ohio regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Ohio program staff, and the State's commitments concerning the program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Ohio from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the Federal Register and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires (30 days after the first publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and

Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Ohio including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2322 or e-mail rlb@nrc.gov.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 30 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 550 NRC licenses will transfer to Ohio. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the Federal Register for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials¹ and activities that involve use of the materials. In a letter dated June 22, 1998, Governor Voinovich certified that the State of Ohio has a program for the control of radiation hazards that is adequate to protect public health and

¹The radioactive materials, sometimes referred to as "agreement materials," are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

safety within Ohio for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Ohio requests authority over are: (1) the possession and use of byproduct materials as defined in Section 11e.(1) of the Act; (2) the generation, possession, use, and disposal of byproduct materials as defined in Section 11e.(2) of the Act; (3) the possession and use of source materials; (4) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass; (5) the regulation of the land disposal of byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear waste materials received from other persons; and (6) the evaluation of radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the State of Ohio and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the suspension or termination of the Agreement;
- Provide for the transfer of any financial surety funds collected by Ohio for reclamation or long-term surveillance of sites for the disposal of byproduct materials (as defined in Section 11e.(2) of the Act) to the United States if custody of the material and the disposal site are transferred; and
- Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and

to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Ohio.

(c) Ohio currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in Section 3748 of the Ohio Revised Code. Subsection 3748.03 provides the authority for the Governor to enter into an Agreement with the Commission.

Ohio law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Ohio licenses until the licenses expire or are replaced by State issued licenses. NRC licenses transferred to Ohio which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed in accordance with a Commission approved decommissioning plan will continue as Ohio licenses and will be terminated by Ohio when the Commission approved decommissioning plan has been completed.

(d) As described below, the proposed Agreement will be signed only after the fulfillment of commitments by Ohio to hire, train, and qualify a sufficient number of professional/technical staff. Contingent on the fulfillment of these commitments, the NRC staff assessment finds that the Ohio program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Assessment of the Ohio Program for the Control of Agreement Materials

NRC staff has examined the Ohio request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to herein as the "NRC criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Bureau of Radiation Protection (Bureau) of the Ohio Department of Health. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Bureau staff members are specified in the Ohio State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each in radiation protection.

The Bureau currently has staff vacancies, which it is actively recruiting to fill. In response to NRC comments, the Bureau performed, and NRC staff reviewed, an analysis of the expected Bureau workload under the proposed Agreement. Based on the analysis, Ohio has made three commitments. First, the Bureau will employ a staff of at least 21 full-time professional/technical employees for the agreement materials program. Second, the distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. For example, there will be enough inspectors trained and qualified to inspect industrial radiography operations that the program will be able to inspect all of the industrial radiography licensees transferred from NRC without developing a backlog of overdue inspections. Third, each individual on the staff will be qualified in accordance with the Bureau's training and qualification procedure (including use of interim qualification) to function in the areas of responsibility to which the individual is assigned. In the case of individuals assigned to review radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials, this commitment includes assuring that the individuals will be able to:

- Understand and interpret, if necessary, appropriate prototype tests that ensure the integrity of the products under normal, and likely accidental, conditions of use,
- Understand and interpret test results,

- Read and understand blueprints and drawings,
- Understand how the device works and how safety features operate,
- Understand and apply appropriate regulations,
- Understand the conditions of use,
- Understand external dose rates, source activities, and nuclide chemical form, and
- Understand and utilize basic knowledge of engineering materials and their properties.

(b) *Legislation and Regulations.* The Ohio Department of Health is designated by law in Chapter 3748 of the Ohio Revised Code to be the radiation control agency. The law provides the Department the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Public Health Council is authorized to promulgate regulations.

The law requires the Public Health Council to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The Council has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations that were in effect on October 19, 1998. The adoption by reference is contained in Chapter 3701-39-021 of the Ohio Administrative Code (OAC). The Board of Health has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials.

Ohio rule 3701-39-021 (A) specifies that references to the NRC shall be construed as references to the Director of the Department of Health. It is noted, however, that Ohio has adopted most of the NRC regulations as entire Parts, including sections that address regulatory matters reserved to the Commission. Ohio has adopted a provision in Rule 3701-39-021 (A) excepting such sections from being construed as enforced by the Director of the Department of Health. The OAC also contains a provision to avoid interference with licensees when they are complying with regulatory requirements which the Act specifies NRC must enforce and when they are complying with NRC regulatory requirements from which the State licensees have not been exempted by the proposed Agreement. The NRC staff concludes that Ohio will not attempt to enforce the regulatory matters reserved to the Commission. In accordance with

NRC Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," this approach is considered compatible.

The NRC staff review verified that the Ohio rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

The Ohio regulations are different from the NRC regulations with respect to the decommissioning of a licensed facility and the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, i.e., cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility ("unrestricted release"). Under certain circumstances, NRC regulations in 10 CFR Part 20, Subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use ("restricted release"). Ohio law does not allow a license to be terminated under restricted release. Ohio will instead issue special "decommissioning-possession only" licenses as an alternative to license termination under restricted release. The Commission has concluded that Ohio's approach, although different, is compatible.

(c) *Storage and Disposal.* Ohio has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) *Transportation of Radioactive Material.* Ohio has adopted the NRC regulations in 10 CFR Part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Ohio will not attempt to enforce portions of the regulations related to activities, such as

approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Ohio has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) *Evaluation of License Applications.* Ohio has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Ohio has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Ohio radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Ohio Department of Health is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Ohio law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Ohio law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Ohio. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions pursuant to 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Ohio deems the termination to be final despite any other provisions of State law or rule. For NRC licenses that, on the effective date of the proposed Agreement,

contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Ohio in accordance with the plan so long as the licensee conforms to the approved plan.

Ohio also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Ohio to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Ohio's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Ohio to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274c, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of Ohio meets the requirements of the Act, conditioned on completion of the commitments made in regard to the program staff. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

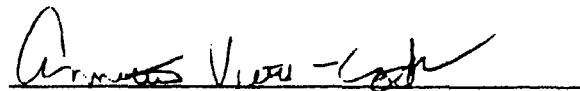
NRC will continue the formal processing of the proposed Agreement, however, the signing of the Agreement will be contingent upon the Bureau's completion of the staffing commitments.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 5th day of March, 1999.

For the Nuclear Regulatory Commission.

A handwritten signature in dark ink, appearing to read "Annette Vietti-Cook", is written over a horizontal line.

Annette Vietti-Cook
Secretary of the Commission

**AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE STATE OF OHIO
FOR THE
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Ohio is authorized under Chapter 3748. of the Ohio Revised Code to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Ohio, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(2) of the Act;
3. Source materials;
4. Special nuclear materials in quantities not sufficient to form a critical mass;
5. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,

6. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material.

Such reserved authority includes:

- a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
- b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);
- c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;
- d. The authority to require, in the case of a license, if any, for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

- e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and
- f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory

programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VI

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article VIII

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and
- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article IX

This Agreement shall become effective on July 22, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Columbus, Ohio this (date to be determined).

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

_____, Chairman

FOR THE STATE OF OHIO

_____, Governor



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

November 12, 1992

The Honorable John R. Kasich
Member, United States House
of Representatives
200 North High Street
Suite 400
Columbus, Ohio 43215

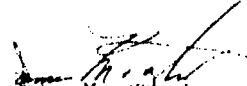
Dear Congressman Kasich:

I am responding to your October 20, 1992, letter written on behalf of your constituent, David P. Martin, Ph.D., Director of Research, Chemlawn, requesting assistance in eliminating or reducing fees on Invoice AM03701-92 for License No. 34-16312-04.

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the Commission recover 100 percent of its budget authority, less appropriations from the Department of Energy (DOE) administered Nuclear Waste Fund, for Fiscal Years 1991 through 1995 by assessing license and annual fees. For FY 1991, the Commission was required to collect approximately \$445 million and approximately \$493 million for FY 1992 through these fees. In order to comply with the law, the Commission published FY 1991 fees in July 1991 and FY 1992 fees in July 1992 based on careful evaluation of public comments. The fee referenced in Mr. Martin's letter is an annual fee that was established to implement OBRA-90.

I have reviewed the information provided to me in your constituent's letter of October 20, 1992, and have granted an extension to April 29, 1992, for filing a request for termination of License No. 34-16312-04 for purposes of avoiding the FY 1992 annual fee. Included in my response to Mr. Martin of Chemlawn. If you need any additional information, please let me know.

Sincerely,


James M. Taylor
Executive Director
for Operations

ENCLOSURE

9212140076 921117
PDR PR
170 57FR18095 PDR

11/9



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

November 13, 1992

Chemlawn
Division of Ecolab Inc.
ATTN: David P. Martin, Ph.D.
Director of Research
115 Winter Road
Delaware, Ohio 43015

Gentlemen:

I am considering your October 20, 1992, letter to Congressman John R. Kasich, as a request for exemption from the FY 1992 annual fee for License No. 34-16312-04, Invoice No. AM03701-92.

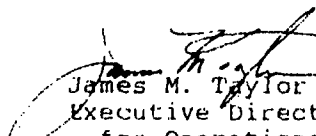
The bases for your request are: 1) in the closing of your laboratory, the radioactive detector unit was shipped from Chemlawn on December 18, 1991, and received by Hewlett-Packard on December 19, 1991; 2) you were not aware of the requirement to file an NRC Form 314 "Certificate of Disposition" by December 31, 1991, to terminate your license; and 3) in your discussions with NRC about proper disposal procedures, this required form was not mentioned to you.

As stated in the final revision to the Commission's fee regulations in 10 CFR Parts 170 and 171 for FY 1992, which was published in the **Federal Register** July 23, 1992, the Commission exempted from the FY 1992 annual fee those licensees and holders of certificates, registrations and approvals who either filed for termination or for a possession only/storage license during the period October 1, 1991, through December 31, 1991.

Based on the information provided in your October 20, 1992, letter, particularly the fact that you disposed of the gauge in 1991, the Commission: 1) grants an extension to the time to file for termination to April 29, 1992; 2) acknowledges that your radioactive detector was shipped back to the manufacturer before December 31, 1991; 3) considers your actions timely for purposes of avoiding the FY 1992 annual fee; and 4) acknowledges that your license was terminated on June 5, 1992.

Invoice No. AM03701-92 will be canceled.

Sincerely,


James M. Taylor
Executive Director
for Operations

42/2080174 1P. 27

U. S. NUCLEAR REGULATORY COMMISSION
FY 92 Annual Materials Fee Invoice
10 CFR 171.16

Invoice Date
=====

08/24/1992

Invoice Number
=====

AM03701-92

CHEMLAWN SERVICES CORPORATION
ATTENTION: RADIATION SAFETY OFFICER
B275 NORTH HIGH STREET

COLUMBUS

OH 43085

***** Mark PAYMENT COPY with any billing address changes *****

License/Approval/ Registration/ Certificate Number	Code	Annual Fee Category(s)	Fee Amount	Surcharge Amount
34-16312-04	ANN	3P	\$ 2,100.00	\$ 150.00
TOTAL:			\$ 2,100.00	\$ 150.00

TOTAL INVOICE: \$ 2,250.00

Make Checks Payable To:

=====

U.S. Nuclear Regulatory Commission
License Fee & Debt Collection Branch
PO Box 954514
St. Louis, MO 63195-4514

==== This PO Box address is
==== for receipt of payments
==== only.

Terms and conditions are attached. Nonpayment of your annual fee may result in the revocation of your license(s) in accordance with the enforcement provisions of 10 CFR 171.23 of the Commission's regulations.

*
* N R C F I L E C O P Y *
*

1/3/92 make for your records.



BILL TO: CHEMLAWN SERVICES CORPORATION
175 WINTER RD
DELAWARE, OH 43015

SENDER ACTIVITY SUMMARY

PAGE 1 OF 1
DATE 12/27
INVOICE NO. 4-517-93384 ACCOUNT NO. 1178-251

TRACKING NO. REFERENCE	SENDER'S NAME AND ADDRESS	RECIPIENT INFORMATION AND PROOF OF DELIVERY	PACKAGES & WEIGHT	SERVICES	CHARGES	NET CHARGE
105027830	MIKE GRIMS CHEMLAWN SERVICES CORPORATION 175 WINTER RD DELAWARE, OH 43015	HP DETECTOR EXCHANGE PROD HEWLETT-PACKARD CO/AVONDALE D RT 41 AND STARR RD AVONDALE, PA 19311 AM DELIVERED 12/18/91 10:04 SIGNED: R. MANCINO	1/ 14" L: 14" H: 14" W: 1" CHARTER	PRIORITY PKG \$500 DV	48.75 2.50	51

BY DELIVERED

SENDER CREDIT

\$1.25 PAY THIS AMOUNT

51

MEMPHIS TO CALL 901-397-2000
MEMPHIS TO 3800-114

JOHN R. KASICH
U.S. HOUSE OF REPRESENTATIVES

MEMBER
COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON
DEFENSE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

1133 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202/225-5355

DISTRICT OFFICE
100 NORTH HIGH STREET
SUITE 400
COLUMBUS, OH 43215
(614) 469-7318

Congress of the United States
House of Representatives
Washington, DC 20515

October 20, 1992

Mr. Ivan Selin, Chair
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

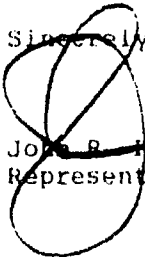
Dear Mr. Selin:

The attached communication concerns a request my constituent has forwarded to me which is under the jurisdiction of your office.

Please look into the statements contained within the attached documents and forward me the necessary information for reply. Please address your reply to my district office as listed above.

If you have any questions, please contact Mr. Mark Bell at 614-469-7318. Thank you for your time and attention to this matter, and I will look forward to your reply.

Sincerely,


John R. Kasich
Representative to Congress

JRK/mb

enclosure

421250282 3 pp.



October 20, 1992

Congressman John R. Kasick
Room 400
200 N. High St.
Columbus, Ohio 43215

Dear Congressman Kasick:

I am writing to request your assistance in eliminating or reducing fees on NRC Invoice #AM03701-92 dated 8/24/92 (copy attached).

ChemLawn Services Corporation was a Licensee under the U.S. Nuclear Regulatory Commission Materials License Number 34-16312-04. This license was held because we owned a Gas Chromatograph with a Detector Cell H.P. Model 18713A containing Nickel-63.

In the closing of our laboratory, the radioactive detector unit was shipped from ChemLawn on 12/18/91, delivered appropriately to Hewlett-Packard on 12/19/91, and disposed of according to governmental regulations on December 19, 1991. All of this was completed in calendar year 1991 (copies attached).

Apparently the only omission on our part was not filing Form 314 "Certificate of Disposition" by December 31, 1991, because we were not aware of this regulation/requirement. In our discussions with NRC about proper disposal procedures, this required form was not mentioned to us. It was filed when we became aware of it on April 29, 1992 (copy attached).

The fact remains the Detector Cell was disposed of in a timely and appropriate manner. For failure to file one form (Form 314), we are being penalized \$2,250.00. This is exorbitant, anti-competitive, and grossly unfair. Any assistance you can provide to eliminate this fee amount would be greatly appreciated.

Please advise. Thank you.

Sincerely,

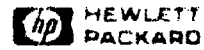
CHEMLAWN

David P. Martin

David P. Martin, Ph.D.
Director of Research

DPM/rcb
Att.

Hewlett-Packard Company
Averdale Division
Route 47
P.O. Box 1000
Averdale, Pennsylvania 17001
June 1, 1981



Enclosure

Mr. Mike Lamm, Mr.
C. Lamm, Jr., Rm. 110
P.O. Box 85, 110
Averdale, PA 17001

Very truly yours,

Enclosure

Enclosure

Enclosure

Enclosure

Enclosure



HEWLETT
PACKARD

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

1. The first step is to identify the problem. In this case, the problem is that the company is not meeting its sales targets. The second step is to analyze the data. The third step is to develop a plan. The fourth step is to implement the plan. The fifth step is to evaluate the results.

[illegible][illegible]

1. 本行在 2017 年 12 月 31 日及 2018 年 6 月 30 日，均无因提供担保而形成的或有负债。
 2. 本行在 2017 年 12 月 31 日及 2018 年 6 月 30 日，均无因提供担保而形成的或有资产。

[illegible][illegible]

CHERRYMAN SERVICES, INC.

827 North Main St

1944

1990

[illegible]

1. 關於「國家安全」：指國家主權、領土完整、政治獨立、憲政秩序、社會秩序、經濟秩序、文化秩序、環境秩序、能源安全、資訊安全、網路安全、太空安全、核子安全、生物安全、化學安全、物理安全、其他安全等事項。

Figure 1. The effect of the concentration of the *Agrobacterium* strain on the transformation efficiency of *Agrobacterium* strain 101. The *Agrobacterium* strain 101 was cultured in YEA medium for 24 h at 28 °C. The cell concentration was adjusted to 1.0 × 10⁸ cells/ml. The cell suspension was mixed with the cell suspension of the *Agrobacterium* strain 102 at the ratio of 1:1, 1:2, 1:3, 1:4, 1:5, 1:6, 1:7, 1:8, 1:9, 1:10, 1:11, 1:12, 1:13, 1:14, 1:15, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21, 1:22, 1:23, 1:24, 1:25, 1:26, 1:27, 1:28, 1:29, 1:30, 1:31, 1:32, 1:33, 1:34, 1:35, 1:36, 1:37, 1:38, 1:39, 1:40, 1:41, 1:42, 1:43, 1:44, 1:45, 1:46, 1:47, 1:48, 1:49, 1:50, 1:51, 1:52, 1:53, 1:54, 1:55, 1:56, 1:57, 1:58, 1:59, 1:60, 1:61, 1:62, 1:63, 1:64, 1:65, 1:66, 1:67, 1:68, 1:69, 1:70, 1:71, 1:72, 1:73, 1:74, 1:75, 1:76, 1:77, 1:78, 1:79, 1:80, 1:81, 1:82, 1:83, 1:84, 1:85, 1:86, 1:87, 1:88, 1:89, 1:90, 1:91, 1:92, 1:93, 1:94, 1:95, 1:96, 1:97, 1:98, 1:99, 1:100, 1:101, 1:102, 1:103, 1:104, 1:105, 1:106, 1:107, 1:108, 1:109, 1:110, 1:111, 1:112, 1:113, 1:114, 1:115, 1:116, 1:117, 1:118, 1:119, 1:120, 1:121, 1:122, 1:123, 1:124, 1:125, 1:126, 1:127, 1:128, 1:129, 1:130, 1:131, 1:132, 1:133, 1:134, 1:135, 1:136, 1:137, 1:138, 1:139, 1:140, 1:141, 1:142, 1:143, 1:144, 1:145, 1:146, 1:147, 1:148, 1:149, 1:150, 1:151, 1:152, 1:153, 1:154, 1:155, 1:156, 1:157, 1:158, 1:159, 1:160, 1:161, 1:162, 1:163, 1:164, 1:165, 1:166, 1:167, 1:168, 1:169, 1:170, 1:171, 1:172, 1:173, 1:174, 1:175, 1:176, 1:177, 1:178, 1:179, 1:180, 1:181, 1:182, 1:183, 1:184, 1:185, 1:186, 1:187, 1:188, 1:189, 1:190, 1:191, 1:192, 1:193, 1:194, 1:195, 1:196, 1:197, 1:198, 1:199, 1:200, 1:201, 1:202, 1:203, 1:204, 1:205, 1:206, 1:207, 1:208, 1:209, 1:210, 1:211, 1:212, 1:213, 1:214, 1:215, 1:216, 1:217, 1:218, 1:219, 1:220, 1:221, 1:222, 1:223, 1:224, 1:225, 1:226, 1:227, 1:228, 1:229, 1:230, 1:231, 1:232, 1:233, 1:234, 1:235, 1:236, 1:237, 1:238, 1:239, 1:240, 1:241, 1:242, 1:243, 1:244, 1:245, 1:246, 1:247, 1:248, 1:249, 1:250, 1:251, 1:252, 1:253, 1:254, 1:255, 1:256, 1:257, 1:258, 1:259, 1:260, 1:261, 1:262, 1:263, 1:264, 1:265, 1:266, 1:267, 1:268, 1:269, 1:270, 1:271, 1:272, 1:273, 1:274, 1:275, 1:276, 1:277, 1:278, 1:279, 1:280, 1:281, 1:282, 1:283, 1:284, 1:285, 1:286, 1:287, 1:288, 1:289, 1:290, 1:291, 1:292, 1:293, 1:294, 1:295, 1:296, 1:297, 1:298, 1:299, 1:300, 1:301, 1:302, 1:303, 1:304, 1:305, 1:306, 1:307, 1:308, 1:309, 1:310, 1:311, 1:312, 1:313, 1:314, 1:315, 1:316, 1:317, 1:318, 1:319, 1:320, 1:321, 1:322, 1:323, 1:324, 1:325, 1:326, 1:327, 1:328, 1:329, 1:330, 1:331, 1:332, 1:333, 1:334, 1:335, 1:336, 1:337, 1:338, 1:339, 1:340, 1:341, 1:342, 1:343, 1:344, 1:345, 1:346, 1:347, 1:348, 1:349, 1:350, 1:351, 1:352, 1:353, 1:354, 1:355, 1:356, 1:357, 1:358, 1:359, 1:360, 1:361, 1:362, 1:363, 1:364, 1:365, 1:366, 1:367, 1:368, 1:369, 1:370, 1:371, 1:372, 1:373, 1:374, 1:375, 1:376, 1:377, 1:378, 1:379, 1:380, 1:381, 1:382, 1:383, 1:384, 1:385, 1:386, 1:387, 1:388, 1:389, 1:390, 1:391, 1:392, 1:393, 1:394, 1:395, 1:396, 1:397, 1:398, 1:399, 1:400, 1:401, 1:402, 1:403, 1:404, 1:405, 1:406, 1:407, 1:408, 1:409, 1:410, 1:411, 1:412, 1:413, 1:414, 1:415, 1:416, 1:417, 1:418, 1:419, 1:420, 1:421, 1:422, 1:423, 1:424, 1:425, 1:426, 1:427, 1:428, 1:429, 1:430, 1:431, 1:432, 1:433, 1:434, 1:435, 1:436, 1:437, 1:438, 1:439, 1:440, 1:441, 1:442, 1:443, 1:444, 1:445, 1:446, 1:447, 1:448, 1:449, 1:450, 1:451, 1:452, 1:453, 1:454, 1:455, 1:456, 1:457, 1:458, 1:459, 1:460, 1:461, 1:462, 1:463, 1:464, 1:465, 1:466, 1:467, 1:468, 1:469, 1:470, 1:471, 1:472, 1:473, 1:474, 1:475, 1:476, 1:477, 1:478, 1:479, 1:480, 1:481, 1:482, 1:483, 1:484, 1:485, 1:486, 1:487, 1:488, 1:489, 1:490, 1:491, 1:492, 1:493, 1:494, 1:495, 1:496, 1:497, 1:498, 1:499, 1:500, 1:501, 1:502, 1:503, 1:504, 1:505, 1:506, 1:507, 1:508, 1:509, 1:510, 1:511, 1:512, 1:513, 1:514, 1:515, 1:516, 1:517, 1:518, 1:519, 1:520, 1:521, 1:522, 1:523, 1:524, 1:525, 1:526, 1:527, 1:528, 1:529, 1:530, 1:531, 1:532, 1:533, 1:534, 1:535, 1:536, 1:537, 1:538, 1:539, 1:540, 1:541, 1:542, 1:543, 1:544, 1:545, 1:546, 1:547, 1:548, 1:549, 1:550, 1:551, 1:552, 1:553, 1:554, 1:555, 1:556, 1:557, 1:558, 1:559, 1:560, 1:561, 1:562, 1:563, 1:564, 1:565, 1:566, 1:567, 1:568, 1:569, 1:570, 1:571, 1:572, 1:573, 1:574, 1:575, 1:576, 1:577, 1:578, 1:579, 1:580, 1:581, 1:5

Figure 1. The effect of the α parameter on the probability of a node being infected. The probability of a node being infected is plotted against the α parameter for different values of β (0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 1.0). The probability of a node being infected increases as α increases, and the rate of increase is higher for larger values of β .

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains. The *Agrobacterium* strains were grown in the YEA medium for 24 h at 28 °C. The cell concentration of the strains was adjusted to 10⁸ cells/ml. The cell suspension was mixed with the plant tissue and incubated for 24 h at 28 °C. The plant tissue was then cultured on the selective medium. The transformation efficiency was calculated as the number of transformants per 100 mg of plant tissue. The data were the mean of three independent experiments.

4/14/81 296 13769

License number:

1A-111, 118

Serial or Reference number:

111-1195

Expiration date: 11-1-78

MATERIALS LICENSE
NON-RENEWABLE

THIS LICENSE IS ISSUED TO THE
OWNER OF THE LICENSED MATERIALS
AND IS NOT TO BE TRANSFERRED

THE LICENSEE SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE LICENSED MATERIALS
AND SHALL BE REQUIRED TO MAINTAIN THE MATERIALS IN A SAFE AND SOUND CONDITION

TERMINATED

DATE

JUN 05 1982

[Signature]

Approved: [Signature] Special Agent in Charge

CONGRESSIONAL CORRESPONDENCE SYSTEM DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of documents) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) _____

2. TYPE OF DOCUMENT _____ Correspondence _____ Hearings (GVAAs)

3. DOCUMENT CONTROL _____ Sensitive (NRC Only) _____ Non-Sensitive

4. CONGRESSIONAL COMMITTEE AND SUBCOMMITTEES (if applicable)

_____ Congressional Committee

_____ Subcommittee

5. SUBJECT CODES

(a) _____

(b) _____

(c) _____

6. SOURCE OF DOCUMENTS

(a) _____ 1820 (document name)

(b) _____ 6045 (c) _____ Attachments

(d) _____ Rekey (e) _____ Other

7. SYSTEM LOG DATES

(a) _____ Date OCA sent document to CCS

(b) _____ Date CCS received document

(c) _____ Date returned to OCA for additional information

(d) _____ Date resubmitted by OCA to CCS

(e) _____ Date entered into CCS by _____

(f) _____ Date OCA notified that document is in CCS

8. COMMENTS

JOHN R. KASICH
12TH DISTRICT, OHIO

MEMBER
COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON
ARMED SERVICES
INVESTIGATION AND MONITORING
NATIONAL SECURITY
COMMITTEE ON THE BUDGET

1135 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 226-6388

TELETYPE UNIT
2000 PENNSYLVANIA AVENUE
SUITE 400
WASHINGTON, DC 20540
(202) 455-7111

Congress of the United States
House of Representatives
Washington, DC 20515

January 18, 1994

The United States Nuclear Regulatory Commission
Region III Office
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Dear Sir or Madam:

I am writing to you on behalf of one of my constituents, Mr. Tim Wagner. He is requesting assistance with a matter, which falls under the jurisdiction of your office.

Please investigate the statements contained within the attached documents and forward me the necessary information for reply.

Thank you for your time and attention in this matter. If you have any questions, please contact Natalie Fuehrer in my district office.

Sincerely,



John R. Kasich
Representative to Congress

JRK/HT

Enclosure

EDO --- 009728

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBER

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7/10

Battelle Ferry Opposition Committee
1000 North High Street
Columbus, OH 43201

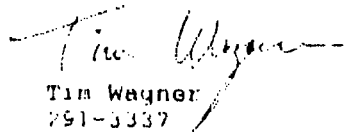
December 28, 1993

Congressman John R. Kasich
200 R. High Street
Columbus, OH 43215

Dear Congressman Kasich:

Enclosed please find copies of letters to the Nuclear Regulatory Commission and Occupational Safety and Health Administration. As you can see, Battelle Memorial Institute has placed the health and safety of our citizens at risk. We would appreciate your active support to insure that these investigations are thorough, objective and timely.

Sincerely,


Tim Wagner
291-3337

Battelle Permit Opposition Committee
1066 North High Street
Columbus, OH 43201

December 28, 1992

United States Nuclear Regulatory Commission
Region III Office
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Dear Federal Officials:

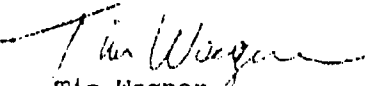
The undersigned is an authorized representative of the Battelle Permit Opposition Committee, an organization of representatives of neighborhoods in the vicinity of the Battelle Memorial Institute's King Avenue Facility in Columbus, Ohio. An employee of that facility has recently made available to us a copy of the enclosed July, 1992, audit of the decontamination and decommissioning program at the Battelle facility. A review of this audit has left us shocked at what appears to be a facility out of control in its handling of radioactive waste materials. There are 193 separate deficiencies noted, many of which are institutional in nature.

We are asking you to investigate the findings of this audit and to take appropriate enforcement action to assure that the Battelle facility is operated in compliance with all federal requirements for radioactive materials handling.

In addition to raising serious questions about the potential threat to our neighborhoods through Battelle's operations, I add that we are also concerned about what this audit demonstrates as to the level of oversight that this facility is receiving. When this audit was released publicly, Battelle's response was that it had passed its NRC inspections. This has left the entire City of Columbus wondering how meaningful those inspections are in light of the serious short-comings disclosed in audit.

This audit comes at an especially difficult time in our community as Battelle is asking for our support on its proposal to significantly expand its mixed waste storage facility in our neighborhoods. Without a serious examination by your office into the contents of this audit, we do not see how we can possibly support an escalation of the risks which Battelle's audit shows are already present at the existing facility. Please, expedite your review of this serious situation for our neighborhoods and for our families.

Sincerely,


Tim Wagner
614-291-3337

94022 40205 11

cc: Senator John Glenn
200 N. High Street
Columbus, OH 43215

Senator Howard M. Metzenbaum
200 N. High Street
Columbus, OH 43215

Congressman John R. Kasich
200 N. High Street
Columbus, OH 43215

Congresswoman Deborah Pryce
200 N. High Street
Columbus, OH 43215

Ohio Attorney General Lee Fisher
30 E. Broad Street, 17th Floor
Columbus, OH 43215

Representative Mike Stinziano
77 S. High Street, 13th Floor
Columbus, OH 43215

Battelle Permit Opposition Committee
1046 North High Street
Columbus, OH 43201

December 29, 1993

The Occupational Safety & Health Administration
U.S. Department of Labor
200 North High Street
Columbus, Ohio 43215

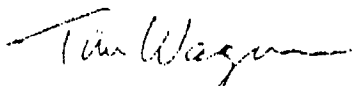
Attn: Michael Ypsilantis
Duty Officer

Dear Mr. Ypsilantis:

Please find enclosed a copy of an internal audit conducted at the Battelle Memorial Institute's King Avenue Facility adjacent to the Ohio State University Campus that documents what we believe are serious health and safety problems for the workers at that facility. The audit, which was conducted by a private consulting firm at Battelle's own direction, documents a total of 193 deficiencies in radioactive waste handling procedures. Among the items documented herein are 38 deficiencies in Battelle's Health and Safety Plan for its employees and 93 specific safety violations. The audit was made available to us by a Battelle employee who believes, as we do, that the facility's worker safety programs are seriously deficient.

For the benefit of Battelle's workers, many of whom live in our neighborhoods, we request that you review this audit and take appropriate steps to insure that Battelle is acting appropriately in regard to worker safety issues. Needless to say, we are also concerned that the serious lapses in accountability documented herein are also affecting our families as well.

Sincerely,



Tim Wagner
291-3337

cc: Senator John Glenn
200 N. High Street
Columbus, OH 43215

Senator Howard M. Metzenbaum
200 N. High Street
Columbus, OH 43215

Congressman John R. Kasich
200 N. High Street
Columbus, OH 43215

Congresswoman Deborah Pryor
120 N. High Street
Columbus, OH 43215

Ohio Attorney General Lee Fisher
36 E. Broad Street, 17th Floor
Columbus, OH 43215

Representative Mike Stinziano
77 S. High Street, 10th Floor
Columbus, OH 43215



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20540-0001

February 16, 1994

Docket No. 50-416

Mr. C. Randy Hutchinson
Vice President, Operations GGN5
Intergy Operations, Inc.
Post Office Box 756
Port Gibson, Mississippi 39150

Dear Mr. Hutchinson:

SUBJECT: GENERIC LETTER 89-10, SUPPLEMENT 5, "INACCURACY OF MOTOR-OPERATED VALVE DIAGNOSTIC EQUIPMENT" (TAC NO. M87982)

On June 28, 1993, the NRC staff issued Supplement 5, "Inaccuracy of Motor-Operated Valve Diagnostic Equipment," to Generic Letter (GL) 89-10, "Safety-Related Motor-Operated Valve Testing and Surveillance," requesting nuclear power plant licensees and construction permit holders (1) to re-examine their motor-operated valve (MOV) programs and to identify measures taken to account for uncertainties in properly setting valve operating thrust to ensure operability, and (2) to evaluate the schedule necessary to consider the new information on MOV diagnostic equipment inaccuracy and to take appropriate action in response to that information. Within 90 days of receipt of Supplement 5 to GL 89-10, licensees were required (1) to notify the NRC staff of the diagnostic equipment used to confirm the proper size, or to establish settings, for safety-related MOVs, and (2) to report whether they had taken actions or planned to take actions (including schedule) to address the new information on the accuracy of MOV diagnostic equipment.

The staff has reviewed the responses, and has found that, for the most part, licensees and permit holders have been actively addressing the uncertainties regarding the accuracy of MOV diagnostic equipment. The increased inaccuracy of MOV diagnostic equipment can raise questions regarding (1) the adequacy of torque switch settings to provide sufficient thrust while not exceeding thrust or torque structural limits and (2) the capability of actuator motors at current settings. In their responses, licensees and permit holders indicated that many MOVs had the potential for underthrusting or overthrusting as a result of the higher than expected inaccuracy of MOV diagnostic equipment. Consequently, some licensees reported that MOVs have been retested, adjusted, or modified to resolve the concerns regarding the accuracy of MOV diagnostic equipment.

You responded to Supplement 5 by letter dated October 5, 1993, and stated that you use MOV diagnostic equipment manufactured by ITI-MOVATS and Liberty Technologies. You also stated that all MOVs setup using the ITI-MOVATS TMD had been evaluated in accordance with ITI-MOVATS Engineering Report 5.2. All of the MOVs had been found acceptable by analysis except two which were retested and determined acceptable. You stated that all MOVs setup using Liberty Technologies' VOTES equipment had been re-evaluated. You further

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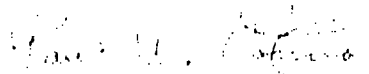
Mr. C. Randy Hutchinson

- 2

stated that 19 of these 32 MOVs had been found to have exceeded their maximum allowable thrust. You stated that all MOVs were determined to be operable, but some corrective actions were planned. In addition, you stated that your procedures had been revised and that it now use the VOIES 2.31 software. During a future inspection, the NRC staff will discuss the Entergy's resolution of the MOV diagnostic equipment accuracy issue. Particularly, the staff will discuss the your operability evaluation for the overthrust MOVs.

This completes all efforts on IAF for M87982 with a completion date and implementation date as of the date of this letter. If you have any questions regarding this matter, please call me at (301) 504-1307.

Sincerely,



Paul W. O'Connor, Senior Project Manager
Project Directorate IV-1
Division of Reactor Projects III/IV/V
Office of Nuclear Reactor Regulation

cc: 100-102100-1000

Mr. C. Randy Hutchinson

2 -

stated that 19 of those 32 MOVs had been found to have exceeded their maximum allowable thrust. You stated that all MOVs were determined to be operable, but some corrective actions were planned. In addition, you stated that your procedures had been revised and that it now use the VOTES 2.31 software. During a future inspection, the NRC staff will discuss the Intergy's resolution of the MOV diagnostic equipment accuracy issue. Particularly, the staff will discuss the your operability evaluation for the overthrust MOVs.

This completes all efforts on IAC No. M87982 with a completion date and implementation date as of the date of this letter. If you have any questions regarding this issue, please call me at (301) 504 1307.

Sincerely,

ORIGINAL SIGNED BY:

Paul W. O'Connor, Senior Project Manager
Project Directorate IV-1
Division of Reactor Projects - III/IV/V
Office of Nuclear Reactor Regulation

cc - see next page

DISTRIBUTION

Docket File	NRC & Local PDRs	PD4-1 r/f
P. Roenan	L. Adamson	J. Roe
W. Beckner	P. O'Connor	L. Royce, RII
ACRS(10)	GG (15R16)	A. Hansen
L. Scarborough		

OFF	IA:PD4-1	PM:PD4-1	D:PD4-1
NAME	Roenan	O'Connor	Beckner
DATE	7/94	7/94	2/16/94
COPY	YES/NO	YES/NO	YES/NO

OFFICIAL RECORD COPY Document Name: M87982.1 LR

Mr. C. Randy Hutchinson
Entergy Operations, Inc.

Grand Gulf Nuclear Station

cc:

Mr. H. W. Keiser, Exec. Vice President
and Chief Operating Officer
Entergy Operations, Inc.
P. O. Box 31995
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Mr. D. L. Pace
GGNS General Manager
Entergy Operations, Inc.
P. O. Box 756
Port Gibson, Mississippi 39150

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Wise, Carter, Child & Caraway
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Jackson, Mississippi 39205

The Honorable William J. Guste, Jr.
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Department of Justice
State of Louisiana
P. O. Box 94005
Baton Rouge, Louisiana 70804-9005

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Winston & Strawn
1400 I Street, N.W. 12th Floor
Washington, D.C. 20005-3502

Dr. F. E. Thompson, Jr.
State Health Officer
State Board of Health
P. O. Box 1700
Jackson, Mississippi 39205

Mr. Sam Mabry, Director
Division of Solid Waste Management
Mississippi Department of Natural
Resources
P. O. Box 10385
Jackson, Mississippi 39209

Office of the Governor
State of Mississippi
Jackson, Mississippi 39201

President,
Clairborne County Board of Supervisors
Port Gibson, Mississippi 39150

Mike Moore, Attorney General
Frank Spencer, Asst. Attorney General
State of Mississippi
Post Office Box 22947
Jackson, Mississippi 39225

Regional Administrator, Region II
U.S. Nuclear Regulatory Commission
101 Marietta St., Suite 2900
Atlanta, Georgia 30323

Mr. Jerrold G. Dewease
Vice President, Operations Support
Entergy Operations, Inc.
P.O. Box 31995
Jackson, Mississippi 39286-1995

Mr. W. W. Watson
Project Manager
Bechtel Power Corporation
P.O. Box 808, 4600 W. Main
Russellville, Arkansas 72801

Mr. Michael J. Meisner
Director, Nuclear Safety
and Regulatory Affairs
Entergy Operations, Inc.
P.O. Box 756
Port Gibson, Mississippi 39150

Mr. K. G. Hess
Bechtel Power Corporation
P. O. Box 2166
Houston, Texas 77252-2166

Mr. Rudolph H. Bernhard
Senior Resident Inspector
U.S. Nuclear Regulatory Commission
Route 2, Box 399
Port Gibson, Mississippi 39150

January 5, 1995

The Honorable John R. Kasich
Member, United States
House of Representatives
200 North High Street, Suite 500
Columbus, OH 42315

Dear Congressman Kasich:

In my previous correspondence dated February 11, 1994, to you concerning correspondence from your constituent, Mr. Tim Wagner, who is representing the Battelle Permit Opposition Committee, we stated we would notify you of the results of our review of Mr. Wagner's concerns.

The enclosure to this letter contains our response to Mr. Wagner along with the "Director's Decision Under 10 C.F.R. 2.206." Mr. Wagner's concerns were processed under the provisions of 10 C.F.R. 2.206 regarding citizen requests for appropriate action by the Nuclear Regulatory Commission staff. As indicated in the "Director's Decision," our review substantiated minor violations with little health and safety significance, and we have taken enforcement and licensing action commensurate with our regulations. We have also taken steps to enhance NRC oversight of Battelle's licensed program.

I trust this reply satisfactorily responds to the concerns stated in your January 18, 1994, letter.

Sincerely,
James M. Taylor
Executive Director
for Operations

Enclosure:

1. Letter to Mr. Tim Wagner
2. Directors Decision DD-94-11

cc: See attached list.

*SEE PREVIOUS CONCURRENCE

OFC	FCLB*	E	FCLB*	E	FCLB*	E	RIII*		OCA		OGC*	E	FCLB*	E
NAME	CGaskin		DAHoadley		CEmeigh		GShear		DRathbun		JGoldberg		RCPierson	
DATE	12/20/94		12/20/94		12/20/94		12/21/94		12/ /94		12/23/94		12/21/94	
OFC	FCSS*		FCSS*		NMSS*		NMSS*		EDO		EDO		OCA	
NAME	ETenEyck		RBurnett		GArlotto		RBernero		HThompson		JMTaylor			
DATE	12/ /94		12/28/94		12/ /94		12/29/94		12/3/94		12/4/95		1/1/95	

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Docket 70-08

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JLieberman, OE

DMorris, EDO

CDefino, PMDA

JLinehan

List of cc's:

The Honorable John Glenn
United States Senator
200 N. High Street
Columbus, OH 43215

The Honorable Howard M. Metzenbaum
United States Senator
200 N. High Street
Columbus, OH 43215

The Honorable Mike Stinziano
Member, United States
House of Representatives
77 S. High Street, 13th floor
Columbus, OH 43215

The Honorable Lee Fisher
Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 14, 1994

Mr. Tim Wagner
Battelle Permit Opposition Committee
1066 North High Street
Columbus, Ohio 43201

Dear Mr. Wagner:

This letter is in response to your Petition on behalf of the Battelle Permit Opposition Committee dated December 28, 1993.

As stated in our previous letter dated March 17, 1994, we have treated your letter as a Petition and my staff has prepared a response pursuant to 10 C.F.R. § 2.206 of the Commission's regulations. For the reasons stated in the enclosed "Director's Decision Under 10 C.F.R. § 2.206," the Petition has been granted.

A copy of the Decision will be filed with the Secretary of the Commission for its review in accordance with 10 C.F.R. § 2.206 of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time. As previously indicated to you, we are willing to meet with you or any other members of your group concerning these findings.

A copy of the Notice, which is being filed with the Office of the Federal Register for publication, is enclosed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert M. Bernero".

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Docket 70-08
(10 C.F.R. § 2.206)

Enclosures:

1. Directors Decision DD-94-11
2. Federal Register Notice

cc: Battelle Memorial Institute
Columbus Operations

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Robert M. Bernero, Director

In the Matter of)	
)	
BATTELLE MEMORIAL INSTITUTE)	Docket No. 70-08
COLUMBUS OPERATIONS)	
(Columbus, Ohio))	(10 C.F.R. § 2.206)

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

On December 28, 1993, the Battelle Permit Opposition Committee (BPOC) filed a Petition for an investigation¹ of certain audit findings involving Battelle Memorial Institute (BMI) and for enforcement action, as appropriate. The referenced audit findings are the product of an independent audit commissioned by BMI and performed by ATEC Associates, Inc. The Petition states that BMI appears to be a facility out of control in its handling of radioactive material, a potential threat exists to the neighborhood through BMI's operations, and the level of Nuclear Regulatory Commission (NRC) oversight of BMI activities is of concern.

By letter dated March 17, 1994, the NRC acknowledged receipt of the request for an investigation and appropriate enforcement action, and informed the requester that the letter would be treated as a Petition in accordance with the provisions of 10 C.F.R. 2.206 of the Commission's regulations and that a decision would be issued within a reasonable time.

0-11223524 IV

¹The NRC interprets "investigation" in this context to mean a review through inspection as opposed to assessing potential wrongdoing.

I have now completed my evaluation of the matters raised by the Petitioner and have determined that, for the reasons stated in this Decision, the Petitioner's request for an inspection and appropriate enforcement action for the deficiencies identified by the audit is granted.

II. BACKGROUND

In July 1992, BMI hired ATIC Associates, Inc., a contractor, to conduct an independent safety inspection or safety audit of BMI's radiation protection program. This audit focused on BMI's research and development program. The audit was self-initiated and was designed to be critical in nature. The audit evaluated the radiation protection program against NRC, Department of Energy (DOE), and Occupational Safety and Health Administration (OSHA) requirements, as well as other good control practices. Approximately 240 person-hours were devoted by the contractor in performing this audit. The audit identified 201 deficiencies or weaknesses in the program. The results were provided to the BPOC.

III. DISCUSSION

In the Petition, the Petitioner requests the Commission to "investigate" the findings of the audit and to take appropriate enforcement action to assure that the BMI's facility is operated in compliance with applicable requirements. In response, during the period January 31 through March 25, 1994, a special safety team inspection was conducted at the BMI's

King Avenue, Columbus, Ohio, and West Jefferson, Ohio, facilities. Included in the inspection was a review of the three concerns cited by the BPOC in the Petition, as described below.

A. Control in Handling of Radioactive Material

The Petitioner states that BMI appears to be a facility out of control in its handling of radioactive material.

NRC Special Nuclear Materials License SNM-7 allows BMI to receive, possess, use, and transfer certain radioactive materials in the conduct of research and development, radiography, and decommissioning activities.

Compliance with license-required actions to control handling of radioactive material has been confirmed by NRC inspectors during safety inspections. This confirmation was achieved through direct observation of ongoing activities, interviews with licensee staff, and examination of licensee records. Specific areas examined included handling and storage of radioactive materials, disposition of waste and maintenance of records in support of licensed activities. In one area of research, BMI used animals for various studies on the effects of radioactive materials. NRC reviewed the disposition of the radioactive carcasses of these animals through incineration as general waste. Research records were reviewed (typically on a random spot check basis) and calculations performed to confirm that the radiation levels of the carcasses were below NRC limits and were, therefore, acceptable for

incineration as general waste. Confirmation was achieved. With regard to the accuracy of measurements of radioactive materials handled by BMI, a review of the data recorded on the licensee's liquid scintillation verification form (used to verify that general waste met 10 CFR 20.2005 levels for radioactive materials in unrestricted areas) indicated that the licensee is meeting NRC requirements. (Results of these inspections were documented in Inspection Reports, including that described in special safety Inspection Report 070-00008/94001(DRSS) dated April 26, 1994.) Regarding storage, inspection tours of the King Avenue site (located in Columbus, Ohio) and West Jefferson, Ohio, site, confirmed that radioactive and hazardous materials were stored adequately.

BMI is also decontaminating and decommissioning (D & D) a series of buildings at the West Jefferson, Ohio, and King Avenue sites. The D & D activities began in 1986 and are scheduled to continue through the year 2000. The facilities undergoing D & D were toured by NRC inspectors, facility workers were interviewed, procedures were reviewed, and several radiological surveys were conducted by the inspectors. The NRC has concluded that the D & D work is being conducted in accordance with BMI's NRC license and applicable NRC regulations.

The July 1992, ATEC audit of BMI's program did identify four potential violations of NRC requirements. The violations were reviewed by NRC during the special inspection, and it was determined by the inspectors that these potential violations met the criteria for non-cited violations (as provided in

10 CFR Part 2, Appendix C) in accordance with the Commission's Enforcement Policy. Specifically, 1) they were corrected in a reasonable time, 2) were not repetitive violations, 3) were not willful violations, 4) were identified by the licensee, 5) were not violations that could reasonably be expected to have been prevented by the licensee's corrective action from a previous violation or licensing finding, and 6) were of such a nature that they would normally have been classified at Severity Level IV or V, which are the least significant severity levels. The violations were related to minor reporting, recordkeeping, and posting deficiencies that are not indicative of significant programmatic weaknesses. Consequently, NRC exercised discretion and considered these as non-cited violations. During the special inspection conducted during the period of January 31 through March 24, 1994, the NRC identified an additional Severity Level IV violation which involved a failure to properly secure or maintain surveillance over a radioactive source. This violation was in addition to those identified by the auditor. As a result of this additional finding, a Severity Level IV Notice of Violation was issued on April 26, 1994, to BMI. A Severity Level IV violation is of relatively minor significance, but a potential exists for an adverse impact on health and safety. BMI responded with appropriate corrective actions as described in correspondence dated May 24, 1994.

The staff has concluded on the basis of the NRC's inspection and evaluation of BMI's radiological control program and ongoing D & D activities, that the licensee has implemented and is maintaining a radioactive materials handling program and radioactive waste management program that is adequate to protect

the radiological safety of employees and the public. Although the ATEC audit reported 20 deficiencies and weaknesses, the NRC found that only a few were of regulatory significance, and the NRC took appropriate action, including enforcement action for the repetitive violation for failure to secure a laboratory. In order to identify deficiencies and correct them in a timely manner in the future, the staff supports licensees' efforts to aggressively perform self assessments such as the ATEC audit.

B. Threat to the Neighborhoods

The Petitioner states that a potential threat exists to the neighborhoods through BMI's operations.

As stated earlier, BMI uses radioactive materials in the conduct of research and development, radiography, tracer studies, and conducts decommissioning activities. The research and development activities include the use of small amounts of radioactive materials for tracer studies and the use of gas chromatographs which contain small amounts of radioactive materials. The radiography activities include the use of two sealed radioactive sources. An additional sealed source is possessed but is kept in storage for future use.

The decommissioning activities are a result of research work conducted as far back as the 1940's. BMI was contracted to perform research activities

regarding the use of nuclear fuel and other nuclear materials. During the conduct of these research activities, small amounts of nuclear materials were unintentionally deposited on floors, walls, machines, and other items involved in the research. BMI is currently in the process of performing D & D on the equipment, work areas, and other items. This extensive effort is expected to be ongoing for several years.

With approval from the NRC and the DOE, BMI has developed and implemented procedures to safely D & D these items. The D & D activities are routinely inspected (average of once per year) by the NRC and DOE (through the DOE resident inspector) to ensure the safety of employees and the public. The inspections have shown that BMI is performing the D & D activities in accordance with its license.

Environmental monitors are located on the fence line of the BMI boundaries at the King Avenue site and the West Jefferson site. Results of BMI's air monitoring, ground water sampling, sediment sampling, and vegetation analysis indicate that they are well within NRC regulations in 10 CFR Part 20 for release of radioactive materials. As such, the NRC has determined that the effluent releases pose no threat to the neighborhoods and are within NRC requirements.

Based on NRC's evaluation of the radiological safety and environmental monitoring requirements in BMI's license and confirmation of BMI's compliance with those requirements through routine and special inspections, NRC staff

concludes that BMI's radiological program is adequate to protect the radiological safety of employees and the public and is being conducted in accordance with applicable requirements.

C. NRC Oversight

The Petitioner states that because BMI has stated that it passed NRC inspections, the audit findings raise a concern over the level of oversight that BMI is receiving from the NRC. From the Petitioner's point of view, the large number of BMI audit findings calls into question the effectiveness of the NRC inspections.

NRC inspections at BMI over the past seven years have focused primarily on activities related to nuclear fuel-related issues and decommissioning activities, areas which were considered to be of the greatest health and safety significance. Twelve inspections were conducted at BMI from May 1986 until July 1993. These inspections identified two violations and two areas of concern² which were of minor health and safety significance. The items

²May 12 through 16, 1986 One violation, no concerns:

One violation: 10 CFR 71.5(a), 49 CFR 173.441(b)(1) - greater than 200 mR/hr on outside of flatbed hauling radwaste to Barnwell. State of South Carolina identified the readings and the readings were corrected by BMI. NRC issued a NOV on June 12, 1986, after readings were identified by South Carolina and corrected by Battelle; therefore, no response to NOV was required because it was of minor health and safety significance and was immediately corrected once identified.

identified were evaluated and corrected in a timely manner. Two recent inspections, July and November 1993, identified no violations of NRC requirements.

During this seven year period, a limited review was performed by the NRC of the other research and development activities and the radiography program. These reviews included evaluations of data derived from records related to environmental monitoring, personnel exposures, environmental protection, waste management, the use of radioactive materials in field studies, and tracer studies. These reviews identified no additional problems.

The special inspection performed at BMI during the period January 31 through March 25, 1994, did not identify any violations of major safety significance in any of BMI's licensed activities covered by the ATEC audit.

January 12 through 16, 1987 One violation, no concerns:

One violation: A retired reactor facility 10 CFR 50.10(a) license expired without a timely renewal. NRC determined that this was an administrative issue and of minor health and safety concern. A NOV was issued February 10, 1987. The renewal was submitted subsequently.

October 23 through 25, 1991 No violations, two concerns:

First concern: The bioassay data reviewed by the NRC revealed that two individuals had positive uptakes of U-238. BMI showed that these levels were below the 10 CFR Part 20 limits; therefore, no further action taken.

Second concern: An exit monitor was removed from a building being decontaminated. BMI replaced the monitor with friskers for personnel to use before leaving building. A portal monitor was then put in place for personnel to walk through prior to leaving the building. NRC determined that no further correspondence was necessary due to this corrective action.

However, the special inspection made an additional finding of one potential violation due to failure to secure a laboratory that was a violation similar to one identified in the ATEC audit findings, and which was also of minimal safety significance. A Severity Level IV Notice of Violation was issued for this violation on April 26, 1994, as previously mentioned.

The special inspection identified one concern, namely, that the structure of BMI's license led to the emphasis by NRC on nuclear fuel-related and decommissioning activities. NRC has decided that more in-depth review and inspection of BMI's research and development activities and radiography program are appropriate, thus increasing the NRC oversight of this licensee. To effectively address these issues it was determined that responsibility for BMI's license should be transferred from NRC Headquarters to the Region III Office, and the license should be divided into three separate licenses, each addressing specific license areas. This decision was made when NRC staff concluded that previous inspections had been too sharply focussed on the nuclear fuel-related and decommissioning activities. Moving licensing responsibility to the Region III Office increased and diversified NRC inspection activities at the site. Responsibility was transferred on March 18, 1994.

With regard to the implications of previous oversight of BMI's licensed program, the NRC evaluated all 201 of the audit findings and determined that, as of the date of the special inspection (January 31 - March 25, 1994), BMI adequately addressed all 201 of the ATEC audit findings and adequately

resolved all but two of them as discussed in the following paragraphs. The BMI staff, during their review of the ATEC audit findings, found that two of the audit findings had broader implications that required further investigation. Specifically, these involved failure to secure a laboratory and accounting of radioactive sources.

NRC's review of the ATEC audit documentation determined that the description of the audit findings was vague, thus making it difficult to determine if some findings were related to NRC regulations or license conditions. As a result, the NRC took a conservative approach to these findings, and any finding that could be remotely related to NRC regulations or license conditions was considered a potential violation. These potential violations identified from the ATEC audit findings were then grouped into six categories to facilitate a determination of whether there were any violations of NRC requirements. The potential violations are as follows:

- (A) Failure to inform the NRC on a timely basis of a Radiation Safety Officer (RSO) change;
- (B) Failure to provide training to personnel;
- (C) Failure to calibrate a survey instrument at the proper frequency;
- (D) Failure to secure laboratories which contained radioactive materials;
- (E) Failure to utilize the proper radiation postings; and
- (F) Failure to account for radioactive sources.

At the time of the special inspection, which was initiated on January 31, 1994, Items D and F remained unresolved. Items A, B, C, and E are

addressed below. In regards to Item D, the inspection determined that the failure to secure laboratories containing radioactive material had been corrected for those laboratories identified in the audit. However, during the special inspection another separate laboratory, not identified in the ATEC audit findings, was identified which was not properly secured in accordance with 10 CFR 20.1801 (see discussion above). This matter is discussed in Inspection Report 070-00008/94001(DRSS) dated April 26, 1994.

Item F, the inability to account for several sources, was reviewed in detail with the licensee. The BMI personnel contend that the sources were either properly disposed of as radioactive waste, transferred to an authorized recipient, or remain in storage in the hot cells awaiting decommissioning. Through the efforts of both the BMI personnel and the NRC, information was gathered demonstrating that this appears to be a recordkeeping issue. The information accumulated was based on NRC review of BMI documents and interviews with BMI personnel and other NRC licensees working in conjunction with BMI in the conduct of research activities. Based on our review, NRC is confident that the sources are not in the public domain or in an unrestricted area of the facility. The NRC will continue to monitor this issue during future inspections.

The remaining potential violations (Items A, B, C, and E) are being treated as non-cited violations and are detailed in the indicated sections of Inspection Report 070-00008/94001(DRSS) dated April 26, 1994, as discussed below:

Item A Failure to inform the NRC on a timely basis of an RSO change
(Section 3);

The licensee changed the RSO without prior notification to or approval by the NRC, although an amendment request was submitted at a later date and approved. The finding was considered to be of an administrative nature, an isolated violation, was identified by BMI, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective actions by a previous violation or licensee finding that occurred within the past two years of the inspection at issue, or the period within the last two inspections; was corrected in a reasonable time, and was not a willful violation. Accordingly, the NRC exercised discretion, and the finding was considered to be a non-cited violation.

Item B Failure to provide training to personnel (Section 7);

The licensee identified that training was not being provided to personnel based upon the ATEC audit. That audit further identified the training issue was a recordkeeping problem. For example, training was provided, but records were not kept adequately. At least 30 BMI employees interviewed indicated that they were provided initial radiation safety training but, through administrative error, the training was not properly recorded in the BMI records. The finding was considered to be of minor health and safety

significance, was corrected in a reasonable time, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or licensee finding that occurred within the past two years of the inspection at issue, or the period within the last two inspections; and was not a willful violation. Accordingly, the NRC exercised discretion and the finding was considered to be a non-cited violation.

Item C Failure to calibrate a survey instrument at the proper frequency (Section 9);

The BMI ATEC audit identified that one survey instrument out of approximately 50 possessed by BMI had not been calibrated for approximately one year. The licensee inventoried all survey instruments and initiated tracking of their calibration dates. The NRC reviewed and confirmed the licensee inventory. The finding was considered to be of an administrative nature, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or licensee finding that occurred within the past two years of the inspection at issue, or the period within the last two inspections; was corrected in a reasonable time, and was not a willful violation. Accordingly, the NRC exercised discretion, and the finding was considered to be a non-cited violation.

Item 1 Failure to utilize the proper radiation postings (Section 16).

The ATEC audit identified a number of potential NRC-related posting deficiencies. Based upon that audit finding the license took an aggressive approach to post areas where required. NRC verified that the posting deficiencies were corrected. The finding was considered to be of minor health and safety significance, was corrected in a reasonable time, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or licensee finding within the past two years of the inspection at issue, or the period within the last two inspections; and was not a willful violation. Accordingly, the NRC exercised discretion, and the finding was considered to be a non-cited violation.

Remaining audit findings

The remaining audit findings were related to Battelle's research and development safety program. These findings involved questionable laboratory practices and portions of the radiation safety program where OSHA, not NRC, requirements applied. The NRC referred the findings concerning questionable laboratory practices and relevant radiation safety issues to OSHA for resolution. The ATEC auditor, in some cases, also did not have additional relevant information that would have mitigated some audit findings. BMI identified corrective actions for the audit findings by conducting reviews of the laboratory facilities; interviews with BMI employees; and a review of

records and documents that were associated with the general health and safety of BMI employees and the public.

A copy of NRC Inspection Report 070-00008/94001(DRSS) dated April 26, 1994, was provided to the Petitioner on June 7, 1994. There will be no further action regarding this matter, since the NRC considers the concerns resolved. Future NRC inspections will be directed to specific program areas, consistent with the restructured license, to focus inspections by the type of nuclear material and activity involved, i.e., special nuclear material, byproduct material, and broad scope license activities such as radiography and tracer studies. NRC will continue to support efforts by licensees, including BMI, to implement effective self assessments and implement timely corrective actions when deficiencies and weaknesses are identified.

The Petitioner's concern regarding NRC oversight was substantiated. As described above, action has been taken to enhance NRC oversight of BMI's licensed program.

IV. CONCLUSION

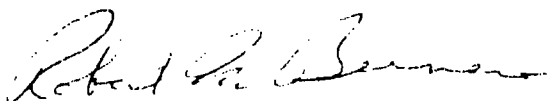
The Staff has carefully considered the request of the Petitioner. In addition, the Staff has evaluated the bases for the Petitioner's request. For the reasons discussed above, I conclude that the Petitioner has raised valid issues related to BMI's compliance with NRC requirements and the NRC's licensing and oversight of the BMI facility. Accordingly, the Petitioner's

request for an investigation and enforcement action pursuant to 10 C.F.R. § 2.206 is granted as described in this Decision, and appropriate enforcement and other actions for the ATEC audit related deficiencies have been taken as described above. In addition, as described above, appropriate action has been taken by the NRC staff to address the NRC's oversight of BMI's licensed activities.

As provided by 10 C.F.R. § 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland this 14th day of December 1994.

FOR THE NUCLEAR REGULATORY COMMISSION



Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure:
NRC Inspection Report
070-00008/94001(DRSS)

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET 70-08

BATTELLE MEMORIAL INSTITUTE

COLUMBUS OPERATIONS

COLUMBUS, OHIO

ISSUANCE OF DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated December 28, 1993, submitted by the Battelle Permit Opposition Committee regarding the Battelle Memorial Institute (BMI), Columbus, Ohio facility.

The NRC Office of Nuclear Material Safety and Safeguards noticed the Petition for consideration under 10 C.F.R. § 2.206. The Petition requested that the U.S. Nuclear Regulatory Commission investigate the findings of a July 1992, audit of decontamination and decommissioning at BMI and to take appropriate enforcement action.

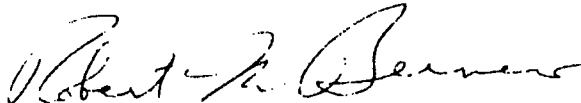
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The Director of the Office of Nuclear Material Safety and Safeguards has determined to grant the Petition. The reasons for this Decision are explained in the "Director's Decision Under 10 C.F.R. § 2.206" (DD-94-11), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, NW, Washington, DC 20555.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 C.F.R. 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 14th day of December 1994.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in dark ink, appearing to read "Robert M. Bernero", is written over the typed name.

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

JOHN R KASICH
13TH DISTRICT, OHIO

MEMBER
COMMITTEE ON ARMED SERVICES
SUBCOMMITTEES
IN ARMED SERVICES
PROCUREMENT AND MILITARY
NUCLEAR SYSTEMS
COMMITTEE ON THE BUDGET

Congress of the United States
House of Representatives
Washington, DC 20515

1133 LONGWORTH MAILST. OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-8388

DISTRICT OFFICE
220 N. HIGH STREET
SUITE 400
COLUMBUS, OH 43215
(614) 486-7318
4697X8

January 18, 1994

The United States Nuclear Regulatory Commission
Region III Office
799 Roosevelt Road
Glen Ellyn, Illinois 60137


Dear Sir or Madame:

I am writing to you on behalf of one of my constituents, Mr. Tim Wagner. He is requesting assistance with a matter, which falls under the jurisdiction of your office.

Please investigate the statements contained within the attached documents and forward me the necessary information for reply.

Thank you for your time and attention in this matter. If you have any questions, please contact Natalie Fuehrer in my district office.

Sincerely,


John R. Kasich
Representative to Congress

JRK/nf

Enclosure

EDO --- 009728

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

94-224021-200

Battelle Permit Opposition Committee
1066 North High Street
Columbus, OH 43201

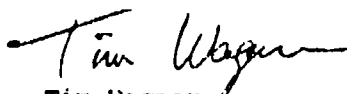
December 28, 1993

Congressman John R. Kasich
200 N. High Street
Columbus, OH 43215

Dear Congressman Kasich:

Enclosed please find copies of letters to the Nuclear Regulatory Commission and Occupational Safety and Health Administration. As you can see, Battelle Memorial Institute has placed the health and safety of our citizens at risk. We would appreciate your active support to insure that these investigations are thorough, objective and timely.

Sincerely,


Tim Wagner
291-3337

Battelle Permit Opposition Committee
1066 North High Street
Columbus, OH 43201

December 28, 1993

United States Nuclear Regulatory Commission
Region III Office
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Dear Federal Officials:

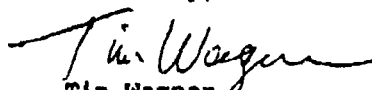
The undersigned is an authorized representative of the Battelle Permit Opposition Committee, an organization of representatives of neighborhoods in the vicinity of the Battelle Memorial Institute's King Avenue Facility in Columbus, Ohio. An employee of that facility has recently made available to us a copy of the enclosed July, 1992, audit of the decontamination and decommissioning program at the Battelle facility. A review of this audit has left us shocked at what appears to be a facility out of control in its handling of radioactive waste materials. There are 193 separate deficiencies noted, many of which are institutional in nature.

We are asking you to investigate the findings of this audit and to take appropriate enforcement action to assure that the Battelle facility is operated in compliance with all federal requirements for radioactive materials handling.

In addition to raising serious questions about the potential threat to our neighborhoods through Battelle's operations, I add that we are also concerned about what this audit demonstrates as to the level of oversight that this facility is receiving. When this audit was released publicly, Battelle's response was that it had passed its NRC inspections. This has left the entire City of Columbus wondering how meaningful those inspections are in light of the serious short-comings disclosed in audit.

This audit comes at an especially difficult time in our community as Battelle is asking for our support on its proposal to significantly expand its mixed waste storage facility in our neighborhoods. Without a serious examination by your office into the contents of this audit, we do not see how we can possibly support an escalation of the risks which Battelle's audit shows are already present at the existing facility. Please, expedite your review of this serious situation for our neighborhoods and for our families.

Sincerely,


Tim Wagner
614-291-3387

9402240205 1r.

cc: Senator John Glenn
200 N. High Street
Columbus, OH 43215

Senator Howard M. Metzenbaum
200 N. High Street
Columbus, OH 43215

Congressman John R. Kasich
200 N. High Street
Columbus, OH 43215

Congresswoman Deborah Pryce
200 N. High Street
Columbus, OH 43215

Ohio Attorney General Lee Fisher
30 E. Broad Street, 17th Floor
Columbus, OH 43215

Representative Mike Stinziano
77 S. High Street, 13th Floor
Columbus, OH 43215

Battelle Permit Opposition Committee
1066 North High Street
Columbus, OH 43201

December 28, 1993

The Occupational Safety & Health Administration
U.S. Department of Labor
200 North High Street
Columbus, Ohio 43215


Attn: Michael Ypsilantis
Duty Officer

Dear Mr. Ypsilantis:

Please find enclosed a copy of an internal audit conducted at the Battelle Memorial Institute's King Avenue Facility adjacent to the Ohio State University Campus that documents what we believe are serious health and safety problems for the workers at that facility. The audit, which was conducted by a private consulting firm at Battelle's own direction, documents a total of 193 deficiencies in radioactive waste handling procedures. Among the items documented herein are 38 deficiencies in Battelle's Health and Safety Plan for its employees and 93 specific safety violations. The audit was made available to us by a Battelle employee who believes, as we do, that the facility's worker safety programs are seriously deficient.

For the benefit of Battelle's workers, many of whom live in our neighborhoods, we request that you review this audit and take appropriate steps to insure that Battelle is acting appropriately in regard to worker safety issues. Needless to say, we are also concerned that the serious lapses in accountability documented herein are also affecting our families as well.

Sincerely,


Tim Wagner
291-3337

cc: Senator John Glenn
200 N. High Street
Columbus, OH 43215

Senator Howard M. Metzenbaum
200 N. High Street
Columbus, OH 43215

Congressman John R. Kasich
200 N. High Street
Columbus, OH 43215

Congresswoman Deborah Pryce
200 N. High Street
Columbus, OH 43215

Ohio Attorney General Lee Fisher
30 E. Broad Street, 17th Floor
Columbus, OH 43215

Representative Mike Stinziano
77 S. High Street, 13th Floor
Columbus, OH 43215



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

March 14, 1995

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9 million less than the FY 1994 amount and \$15 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to 10 CFR Part 170 would revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees would decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees. The NRC is proposing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to all licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also proposed to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. This notice provides for a 30-day public comment period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170 and 171

cc: Representative Frank Pallone

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PDR ORG NRCCO
PDR

CC52/1

F/12



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

March 14, 1995

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9 million less than the FY 1994 amount and \$15 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to 10 CFR Part 170 would revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees would decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees. The NRC is proposing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to all licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also proposed to increase the predictability of annual fees for NRC licensees.

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Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170 and 171

cc: Senator J. Bennett Johnston



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

March 14, 1995

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9 million less than the FY 1994 amount and \$15 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to 10 CFR Part 170 would revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees would decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees. The NRC is proposing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to all licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also proposed to increase the predictability of annual fees for NRC licensees.

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170 and 171

cc: Representative Martin Olav Sabo



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

March 14, 1995

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

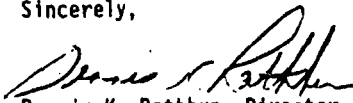
The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9 million less than the FY 1994 amount and \$15 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to 10 CFR Part 170 would revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees would decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees. The NRC is proposing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to all licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also proposed to increase the predictability of annual fees for NRC licensees.

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Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170 and 171

cc: Senator J. James Exon



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

March 14, 1995

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9 million less than the FY 1994 amount and \$15 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to 10 CFR Part 170 would revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees would decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees. The NRC is proposing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to all licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also proposed to increase the predictability of annual fees for NRC licensees.

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170 and 171

cc: Senator Bob Graham

IDENTICAL LETTERS SENT TO:

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

cc: Senator Bob Graham

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

cc: Representative Frank Pallone

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

cc: Representative Tom Bevill

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

cc: Senator J. Bennett Johnston

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

cc: Representative Martin Olav Sabo

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

cc: Senator J. James Exon

SEE NEXT PAGE FOR DISTRIBUTION AND CONCURRENCE



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

March 14, 1995

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9 million less than the FY 1994 amount and \$15 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

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Sincerely,

A handwritten signature in dark ink, appearing to read "R. M. Scroggins", is written over the typed name.

Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure: Proposed Revision
to 10 CFR Parts 170 and 171

cc: Representative Tom Bevill

9504070338 950314
PDR ORG NRCCQ
PDR

CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Mr. J. R. P. S. S. S. S.
2. TYPE OF DOCUMENT ☒ Correspondence ☐ Hearings (Qs/As)
3. DOCUMENT CONTROL ☐ Sensitive (NRC Only) ☒ Non-sensitive
4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)

Congressional Committee
Subcommittee
5. SUBJECT CODES
(a) _____
(b) _____
(c) _____
6. SOURCE OF DOCUMENTS
(a) _____ 3520 (document name _____)
(b) ☒ Scan (c) _____ Attachments
(d) _____ Rekey (e) _____ Other _____
7. SYSTEM LOG DATES
(a) 7/5/78 Date OCA sent document to CCS
(b) _____ Date CCS receives document
(c) _____ Date returned to OCA for additional information
(d) _____ Date resubmitted by OCA to CCS
(e) _____ Date entered into CCS by _____
(f) _____ Date OCA notified that document is in CCS
8. COMMENTS

050064



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

April 26, 1995

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members.

Although the petition has been denied, the following actions requested by the petitioner have already been implemented by the NRC: 1) effective with the FY 1994 final fee rule published July 20, 1994, the Department of Energy (DOE) is being assessed fees for costs associated with NRC's review of DOE sites pursuant to the Uranium Mill Tailings Radiation Control Act; and 2) available data supporting the Part 170 licensing and inspection billings are being provided with the bills issued to uranium recovery licensees and applicants.

In its continuing efforts to improve the NRC fee program, the Commission also included several changes in the proposed FY 1995 fee rule, published in the *Federal Register* on March 20, 1995, for public comment, that would improve the equity of fees. These improvements will result in reduced annual fees for the uranium recovery class of licensees. For example, the NRC proposed an alternate method for distributing costs for certain activities that raise fairness and equity concerns, such as those related to the NRC regulatory support to the Agreement states. The Commission also proposed a method for stabilizing annual fees and therefore limiting relatively large increases that result from factors such as a decline in the number of licensees in the uranium recovery class.

Enclosed is a copy of the Notice of Denial which is being transmitted to the *Federal Register* for publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ron Scroggins", written over a horizontal line.

Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure:
Notice of Denial

cc: Representative Tom Bevil

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

April 26, 1995

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members.

Although the petition has been denied, the following actions requested by the petitioner have already been implemented by the NRC: 1) effective with the FY 1994 final fee rule published July 20, 1994, the Department of Energy (DOE) is being assessed fees for costs associated with NRC's review of DOE sites pursuant to the Uranium Mill Tailings Radiation Control Act; and 2) available data supporting the Part 170 licensing and inspection billings are being provided with the bills issued to uranium recovery licensees and applicants.

In its continuing efforts to improve the NRC fee program, the Commission also included several changes in the proposed FY 1995 fee rule, published in the *Federal Register* on March 20, 1995, for public comment, that would improve the equity of fees. These improvements will result in reduced annual fees for the uranium recovery class of licensees. For example, the NRC proposed an alternate method for distributing costs for certain activities that raise fairness and equity concerns, such as those related to the NRC regulatory support to the Agreement states. The Commission also proposed a method for stabilizing annual fees and therefore limiting relatively large increases that result from factors such as a decline in the number of licensees in the uranium recovery class.

Enclosed is a copy of the Notice of Denial which is being transmitted to the *Federal Register* for publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Rathbun", is written over a horizontal line.

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosure:
Notice of Denial

cc: Representative Martin Olav Sabo



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

April 26, 1995

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members.

Although the petition has been denied, the following actions requested by the petitioner have already been implemented by the NRC: 1) effective with the FY 1994 final fee rule published July 20, 1994, the Department of Energy (DOE) is being assessed fees for costs associated with NRC's review of DOE sites pursuant to the Uranium Mill Tailings Radiation Control Act; and 2) available data supporting the Part 170 licensing and inspection billings are being provided with the bills issued to uranium recovery licensees and applicants.

In its continuing efforts to improve the NRC fee program, the Commission also included several changes in the proposed FY 1995 fee rule, published in the *Federal Register* on March 20, 1995, for public comment, that would improve the equity of fees. These improvements will result in reduced annual fees for the uranium recovery class of licensees. For example, the NRC proposed an alternate method for distributing costs for certain activities that raise fairness and equity concerns, such as those related to the NRC regulatory support to the Agreement states. The Commission also proposed a method for stabilizing annual fees and therefore limiting relatively large increases that result from factors such as a decline in the number of licensees in the uranium recovery class.

Enclosed is a copy of the Notice of Denial which is being transmitted to the *Federal Register* for publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Rathbun", is written over a horizontal line.

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosure:
Notice of Denial

cc: Representative Frank Pallone



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

April 26, 1995

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members.

Although the petition has been denied, the following actions requested by the petitioner have already been implemented by the NRC: 1) effective with the FY 1994 final fee rule published July 20, 1994, the Department of Energy (DOE) is being assessed fees for costs associated with NRC's review of DOE sites pursuant to the Uranium Mill Tailings Radiation Control Act; and 2) available data supporting the Part 170 licensing and inspection billings are being provided with the bills issued to uranium recovery licensees and applicants.

In its continuing efforts to improve the NRC fee program, the Commission also included several changes in the proposed FY 1995 fee rule, published in the *Federal Register* on March 20, 1995, for public comment, that would improve the equity of fees. These improvements will result in reduced annual fees for the uranium recovery class of licensees. For example, the NRC proposed an alternate method for distributing costs for certain activities that raise fairness and equity concerns, such as those related to the NRC regulatory support to the Agreement states. The Commission also proposed a method for stabilizing annual fees and therefore limiting relatively large increases that result from factors such as a decline in the number of licensees in the uranium recovery class.

Enclosed is a copy of the Notice of Denial which is being transmitted to the *Federal Register* for publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Rathbun", written over a horizontal line.

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosure:
Notice of Denial

cc: Senator J. Bennett Johnston



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

April 26, 1995

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members.

Although the petition has been denied, the following actions requested by the petitioner have already been implemented by the NRC: 1) effective with the FY 1994 final fee rule published July 20, 1994, the Department of Energy (DOE) is being assessed fees for costs associated with NRC's review of DOE sites pursuant to the Uranium Mill Tailings Radiation Control Act; and 2) available data supporting the Part 170 licensing and inspection billings are being provided with the bills issued to uranium recovery licensees and applicants.

In its continuing efforts to improve the NRC fee program, the Commission also included several changes in the proposed FY 1995 fee rule, published in the *Federal Register* on March 20, 1995, for public comment, that would improve the equity of fees. These improvements will result in reduced annual fees for the uranium recovery class of licensees. For example, the NRC proposed an alternate method for distributing costs for certain activities that raise fairness and equity concerns, such as those related to the NRC regulatory support to the Agreement states. The Commission also proposed a method for stabilizing annual fees and therefore limiting relatively large increases that result from factors such as a decline in the number of licensees in the uranium recovery class.

Enclosed is a copy of the Notice of Denial which is being transmitted to the *Federal Register* for publication.

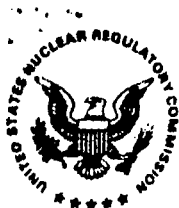
Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Rathbun", is written over a horizontal line.

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosure:
Notice of Denial

cc: Senator J. James Exon



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

April 26, 1995

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members.

Although the petition has been denied, the following actions requested by the petitioner have already been implemented by the NRC: 1) effective with the FY 1994 final fee rule published July 20, 1994, the Department of Energy (DOE) is being assessed fees for costs associated with NRC's review of DOE sites pursuant to the Uranium Mill Tailings Radiation Control Act; and 2) available data supporting the Part 170 licensing and inspection billings are being provided with the bills issued to uranium recovery licensees and applicants.

In its continuing efforts to improve the NRC fee program, the Commission also included several changes in the proposed FY 1995 fee rule, published in the *Federal Register* on March 20, 1995, for public comment, that would improve the equity of fees. These improvements will result in reduced annual fees for the uranium recovery class of licensees. For example, the NRC proposed an alternate method for distributing costs for certain activities that raise fairness and equity concerns, such as those related to the NRC regulatory support to the Agreement states. The Commission also proposed a method for stabilizing annual fees and therefore limiting relatively large increases that result from factors such as a decline in the number of licensees in the uranium recovery class.

Enclosed is a copy of the Notice of Denial which is being transmitted to the *Federal Register* for publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Rathbun", is written over a horizontal line.

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosure:
Notice of Denial

cc: Senator Bob Graham



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

AF 07-2 017 ✓
PDR

June 15, 1995

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Senator J. Bennett Johnston

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

AF07-2
PDR

June 15, 1995

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Representative Martin Olav Sabo



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

AF07-2
PDR

June 15, 1995

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Senator J. James Exon



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

AF07-2
PDR

June 15, 1995

(The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Representative Frank Pallone



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

AF07-2
PDR

June 15, 1995

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545-0001

June 15, 1995

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Senator Bob Graham

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PDR PR
170 60FR14671 PDR

CCS
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7/1/95



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

June 15, 1995

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Representative Frank Pallone



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

June 15, 1995

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun", with a small "for" written below it.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Senator J. Bennett Johnston



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

June 15, 1995

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. M. Scroggins", is written over a horizontal line.

Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Representative Tom Bevill



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

June 15, 1995

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 revise all "flat" licensing fees to reflect the results of the biennial review required by the CFO Act.

The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Representative Martin Olav Sabo



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

June 15, 1995

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1995, the NRC must collect approximately \$504 million through these fees. This is \$9.4 million less than the FY 1994 amount and \$15.3 million less than the FY 1993 amount. The budget reduction results in reduced fees for NRC licensees.

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The amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, establish the amount of the FY 1995 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1995 annual fees will decrease as compared to FY 1994. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees. The NRC is implementing several fee policy changes to mitigate the fairness and equity concerns identified in the February 23, 1994 fee policy report submitted to Congress in response to the requirements of the Energy Policy Act of 1992. The costs associated with these concerns are being spread to the broadest base of NRC licensees, resulting in reduced impact on any particular class of licensees. Policy changes are also being implemented to increase the predictability of annual fees for NRC licensees.

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision
to 10 CFR Parts 170 and 171

cc: Senator J. James Exon

**CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST**

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Att. to Hare/10/4
2. TYPE OF DOCUMENT ~~Correspondence~~ ☒ Hearings (Qs)
3. DOCUMENT CONTROL ☐ Sensitive (NRC Only) ☒ Non-sensitive
4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)

Congressional Commi
Subcommittee
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(a) 7/19/95 Date OCA sent document to CCS
(b) _____ Date CCS receives document
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COMMENTS

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately \$503.6 million.

EFFECTIVE DATE: 30 days after publication.

Copies of comments received and the agency workpapers that support these final 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.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

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

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted 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 fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget

authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

On March 20, 1995 (60 FR 14670), the NRC published its proposed rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund.

Several changes were proposed by the NRC to the fees to be assessed for FY 1995. These changes were summarized in the proposed rule (60 FR 14671; March 20, 1995) and are as follows:

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately \$56 million would be allocated to all NRC licensees based on the budgeted dollars for each class of licensees.

2. Eliminate the materials "flat" inspection fees in 10 CFR Part 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These actions would streamline the license fee process and result in more predictable fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates were proposed instead of a single rate.

4. Change the methodology for calculating annual fees for power reactors, fuel facilities, and uranium recovery licensees to improve the relationship between annual fees and the cost of providing regulatory services to the classes and subclasses of licensees, and to improve NRC efficiency.

5. Implement the newly promulgated NRC small entity size standards and establish a new lower-tier size standard for annual fee purposes.

The Commission held a public meeting on March 15, 1995, at which the NRC staff briefed the Commission on the proposed changes for FY 1995. A transcript of the Commission meeting is available and has been placed in the Public Document Room.

The American Mining Congress¹ filed a Petition for Rulemaking which requested among other things that (1) annual fees not be assessed for mills in a standby status; and (2) a licensee review board to oversee NRC fees be established. The Commission denied the request on April 28, 1995 (60 FR 20918) noting that (1) the NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the applicant or licensee and (2) petitioner's request that the Department of Energy be assessed fees for Uranium Mill Tailings Radiation Control Act (UMTRCA) actions was implemented in the final fee rule for FY 1994.

II. Responses to Comments

The NRC received twenty-two comments on the proposed rule. Although the comment period ended on April 19, 1995, the NRC has reviewed and evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

¹The American Mining Congress merged with the National Coal Association on February 13, 1995, and is now the National Mining Association.

A. Comments regarding the major changes proposed in the FY 1995 fee rule.

1. Change the method for allocating those budgeted costs (about \$56 million) that cause fairness and equity concerns.

Comment. The commenters agreed that the proposed method for allocating approximately \$56 million in budgeted costs for NRC activities which are not directly related to the cost of regulating licensees represented a more equitable method for distributing the costs. Many commenters indicated that, pending legislative relief by Congress to remedy this inequitable situation, they supported the proposal to treat these costs similar to overhead and distribute these costs based on the percentage of the budget directly attributable to a class of licensees. However, the commenters also believed that these costs should not be paid by any licensee and recommended that the NRC should continue to urge Congress to modify OBRA-90 to remove these costs from the fee base. For example, one commenter stated that the proposed 89% allocation of these costs to power reactors results in a charge of \$511,000 per operating power reactor. The commenter argued that "power reactor licensees should not have to bear this ever increasing additional fee charge for NRC agency costs that are not related to the regulatory costs of these licensees. Accordingly, these costs should not be included in the user fee base to be recovered from power reactor licensees."

Response. The NRC is adopting in this final rule the allocation method in the proposed rule because it represents an equitable way to allocate the costs and most of the comments supported use of the revised methodology. As noted in the comments, on February 23, 1994, the NRC submitted its report to Congress on fees in compliance with the Energy Policy Act of 1992. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent, and eliminate the requirement that NRC assess 10 CFR Part 170 fees. Because the requested legislation has not been enacted, the NRC in this final rule will allocate the costs (approximately \$56 million) that have raised fairness and equity concerns among the broadest base of NRC licensees. The Commission will continue to discuss and work with the Congress to make fees more fair and equitable.

2. Streamline and stabilize fees.

Comment. Commenters, for the most part, supported the proposal to stabilize fees by adjusting the annual fees starting in FY 1996 by the percentage change (decrease or increase) in the NRC's total budget. Commenters also supported the NRC's plan to

reexamine this approach should there be a substantial change in the total NRC budget or in the magnitude of a specific budget allocation to a specific class of licensees. Commenters also were in agreement that the "flat" materials inspection fees of 10 CFR Part 170 should be eliminated and the costs included in the 10 CFR Part 171 annual fees. Most commenters agreed that the proposed changes represent a simplification and streamlining of the fee-setting procedures and are necessary in order to eliminate the large swings in annual fees that have occurred in past years and to allow for greater predictability of fees. Other commenters indicated, however, that they are concerned about the simple annual percentage change adjustment to future annual fees because there has been no resolution of certain long-standing concerns associated with the fairness and equity of NRC fees.

Response. The NRC is adopting in this final rule the proposed methodology to streamline and stabilize fees based on the comments received supporting the methodology. Although not a specific change in this rule, the NRC plans to adjust the annual fees only by the percentage change in NRC's total budget beginning in FY 1996. The NRC believes that this action will help stabilize and improve the predictability of fees. The fees established in this final rule will be used as the base annual fee in subsequent years and the percentage change (plus or minus) in the NRC total budget, adjusted to reflect changes in the total

number of licensees paying fees and estimated collections from 10 CFR Part 170 licensing and inspection fees, will be used to establish annual fees. However, the NRC will make modifications should there be a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. To streamline fees, the NRC is eliminating the materials "flat" inspection fees in 10 CFR Part 170 by including the cost of inspections in certain materials licensees' 10 CFR Part 171 annual fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees.

Comment. All commenters responding to this proposed change supported the revised method of calculating hourly rates to separately, and more equitably, allocate the costs associated with the reactor and materials programs. Commenters believe that the new dual rate structure, which establishes different rates for reactor and materials reviews, is inherently fairer and more equitable to licensees. Most commenters were pleased that the rates for both the reactor and materials classes of applicants have been reduced as compared to FY 1994 and indicated that changing the method of calculating hourly rates is a step in the right direction towards providing a more reasonable relationship to the cost of providing regulatory services. Commenters

supported the use of the "cost center" concept to identify and allocate the NRC budgeted resources to different types of major programs, namely reactor and material licensees, and indicated that this methodology is more consistent with Congressional intent that the NRC identify and properly assess fees to the entities that utilize NRC resources and regulatory services.

Other commenters, however, indicated that while they appreciate the 13 percent reduction in the professional hourly rate for the materials program (from \$133 per hour to \$116 per hour), applying such a uniformly high rate for NRC staff cannot be justified. These commenters point out that the \$116 hourly rate equals or exceeds the hourly charges of senior consultants, principals, or project managers at major consulting firms and substantially exceeds the generally accepted rate for technical staff performing similar work in private industry. Commenters encouraged the NRC to continue examining its budget structure and cost allocation methods so that the hourly rate can be made consistent with and representative of comparable services performed by private industry. One commenter stated that the NRC has still not adequately explained the derivation of the hourly rate, aside from basing it on a presumed number of chargeable hours per full-time equivalent, or how it relates to the services provided. Another commenter stated that the hourly rates are arbitrary and do not reflect the costs of providing regulatory services to licensees.

Response. In this final rule, the NRC has established two professional hourly rates for FY 1995 which will be used to determine the 10 CFR Part 170 fees. A rate of \$123 per hour is established in § 170.20 for the reactor program and a second rate of \$116 per hour is established in § 170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the "cost center" concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA-90. The rates reflect the NRC cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of \$123 and \$116 are discussed in detail in Part III, Section-by-Section Analysis, relating to § 170.20 of the proposed rule (60 FR 14676; March 20, 1995) and the same section of this final rule. For example, Table III shows the budgeted costs and the direct FTEs that must be recovered through fees assessed for the hours expended by the direct FTEs. Additional details on the hourly rate are provided in the NRC workpapers located in the Public

Document Room.

4. Modify NRC small entity and lower-tier size standards for annual fee purposes.

Comment. Two commenters addressed the changes proposed by the NRC for small entity fees. While generally supporting the changes, they believed additional changes should be made. One commenter stated that while he was relieved to see the dramatic reduction in materials annual fees, the company's well logging department of only six employees is still unable to qualify as a small entity even under the new standard because the overall gross annual receipts of the consulting company exceed \$7 million. The second commenter stated that the proposed rule that would raise the dollar threshold for a medical program from \$1 million to \$5 million will afford him great relief and ensures that service will continue to be provided to patients. The commenter, however, believes that a more equitable approach would be to base fees on the nuclear medicine activity levels or nuclear medicine billing/receipts levels rather than the total dollar volume of the entire company.

Response. The NRC uses the receipts-based size standards established by the Small Business Administration (SBA) to establish its own small entity size standards. The SBA recently adjusted its receipts-based size standard levels to account for

the effects of inflation. The NRC adjusted its receipts-based size standards in turn from \$3.5 million to \$5 million, to conform to the SBA rule (60 FR 18344; April 11, 1995). The NRC has also eliminated the separate \$1 million size standard for private practice physicians and will apply the receipts-based standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC believes that these actions will reduce the impact of annual fees on small businesses.

With respect to basing fees on the gross receipts for a department within a company, or on activity levels or nuclear medicine billing/receipts levels rather than the total dollar volume of the entire entity, the NRC's size standards are based on the SBA guidance which defines annual receipts as those which include "revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived." Moreover, as NRC has stated previously, it is impractical to base fees on the criteria suggested by the commenter. See Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513).

5. Change the methodology for calculating annual fees for power reactors, fuel facilities, and uranium recovery licensees.

Comment. All the commenters representing the power reactor,

fuel facility, and uranium recovery industries supported the simplification of annual fees and are encouraged that the annual fees have been reduced compared to FY 1994 levels. Commenters from the reactor industry favored a uniform fee for each operating power reactor. Commenters from the uranium recovery industry supported attempts to make the annual fees more accurately reflect the cost of providing regulatory services and agreed that the proposed fees are far more reasonable than in past years. However, these commenters believe that NRC needs to address a fundamental industry concern that, as the industry continues to shrink in size thereby decreasing the number of licensees being charged annual fees, the costs associated with regulatory services will continue to increase significantly for each remaining licensee. This trend will force more hardships on an industry that is already severely depressed. Other uranium recovery licensees commented that they are concerned with the NRC's proposed fee calculation matrix, which uses a qualitative estimation ranking of "significant", "some", "minor", or "none" to determine a factor used for establishing the annual fee amount for each license. Commenters suggest a more quantitative approach should be applied, using actual costs and resource time allocations, to determine a more accurate fee assessment schedule.

Response. In this final rule, the NRC has established a single uniform annual fee for each operating power reactor and

has refined its method of calculating annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in the final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to determine the final FY 1995 annual fees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. The revised methodologies are explained in more detail in Section IV -- Section-by-Section Analysis of this final rule.

With respect to the suggestion that a more quantitative approach be used to develop the annual fees, the NRC has corroborated the qualitative estimates with resource and time allocation data where such data exist. However, such data in some cases are not available at the level necessary to corroborate the qualitative determinations. The NRC believes that in such cases the approach to be used still results in a more fair and accurate annual fee being charged to fuel facility

and uranium recovery licensees.

In response to the comment relative to annual fee increases as a result of the decrease in the number of licenses, the changes in this final rule to stabilize fees should minimize large fee changes as a result of decreases in licenses. See response to Comment A.1.

B. Other Comments.

1. Amendments to § 170.11.

Comment. One commenter supported the proposal to amend §170.11 to conform to section 161w. of the Atomic Energy Act which would permit charging 10 CFR Part 170 fees to not only power reactors operated by the Tennessee Valley Authority and other Federal government entities, but also to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC).

Response. The NRC has been assessing the USEC 10 CFR Part 170 fees under the authority provided in 161w. of the Atomic Energy Act of 1954, as amended (AEA). The NRC is amending §170.11 to conform its regulations to this statutory provision.

2. Low-Level Waste Costs.

Comment. One commenter was concerned that the proposed fee schedule does not adequately reflect the long-term regulatory costs which are associated with power reactors. The commenter believed that the NRC's \$7 million in annual costs for generic low-level waste work is low in comparison to long-term costs associated with these activities. The commenter indicated that it might be prudent to assume that the long-term costs associated with low-level waste sites will eventually exceed the revenues immediately collected upon disposal.

Response. The amount of \$7 million for NRC's low-level waste activities is the amount identified in the FY 1995 budget to be recovered through fees for these activities. If the NRC costs of these activities increase over the long term and are included in the NRC budget, the NRC is required by OBRA-90 to identify and to recover the increased costs from its licensees in the year in which the costs are budgeted. OBRA-90 does not permit the NRC to recover potential future costs that are not included in the current FY 1995 budget.

3. Spent fuel storage.

Comment. One commenter encouraged the NRC to ensure that any costs associated with spent fuel storage and transportation, particularly the costs associated with the review of the Department of Energy's (DOE) multi-purpose canister program, are

kept properly separated from the costs for specific utility licensing actions. Because these activities are funded from different sources, the commenter stated that NRC must ensure that the cost burden for the DOE reviews is not reflected in utility licensing fees. The commenter noted that in the FY 1995 proposed rule there is no explanation for maintaining the fees for general licenses for storage of spent fuel at substantially higher levels than the fee in 1992 (\$43,000) or 1993 (\$136,000). The commenter questioned whether the fee charged to spent fuel storage licensees includes amounts allocated for other activities.

Response. The costs associated with the review of the DOE's multi-purpose canister program are costs related to the High-Level Waste program which are appropriated from the High Level Waste Fund and separated from specific utility licensing actions. Therefore, in accordance with OBRA-90, the DOE review costs are not included in utility licensing fees, but rather are recovered from the Nuclear Waste Fund. Although the FY 1995 annual fee for spent storage licenses (\$279,000) is higher than in FY 1992 (\$43,000) or 1993 (\$136,000), it is lower than the fee assessed in FY 1994 (\$365,170). The reasons for the increases over FY 1992 and FY 1993 were explained in detail in the final FY 1994 rule (59 FR 36902; July 20, 1994). To recap, first, the budgeted amount necessary to regulate spent fuel facilities increased to provide regulatory oversight for the increased number of facilities. Additionally, as the licensing of these facilities

was completed, the amount of fees from 10 CFR Part 170 necessarily decreased. This resulted in an increased amount that must be recovered from annual fees in 10 CFR Part 171.

4. Annual fees should be prorated when a license is downgraded.

Comment. One commenter proposed that §171.17(b) be amended to allow proration of annual fees for licenses that are downgraded during the year.

Response. The NRC agrees with the commenter that some provision should be made in the annual fee regulations for those instances where a license is downgraded to a license category with a lower annual fee during the fiscal year. Although the NRC currently has in place a system to track applications for new licenses and terminations which can be readily used for fee purposes, no similar system exists that could easily track upgrades or downgrades of licenses. As a result, §171.17 is amended to allow for proration of the annual fee for a downgraded license upon request of the licensee. Such a request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

If a timely proration request is filed, annual fees for licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Licenses for which applications for downgrade are filed on or after April 1 of the fiscal year are assessed the full fee for that fiscal year.

5. Avoid billing for services rendered one year prior to billing date.

Comment. One commenter proposed that the NRC void any bill for costs of regulatory services that were performed more than

one year prior to the invoice date. The commenter stated that this would result in the NRC striving to issue invoices in a timely manner to assure recovery of its budget authority and would not place the licensee in a position of having to pay an unexpected and potentially large invoice.

Response. The NRC has not included this proposal in the final rule. The NRC is required by the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 to pursue debts and claims owed to the U.S. government. However, the NRC has made efforts to issue bills in a more timely manner. During the past year, the NRC has implemented procedures to bill for licensing reviews and inspections within 30 days of the close of the billing quarter during which the review or inspection occurred or was completed. Although there have been rare cases where bills were not issued in a timely manner for licensing and inspection activities, the NRC believes that the 30-day billing procedures will help to minimize the number of such occurrences in the future.

6. Reinstate fee ceiling for topical report reviews.

Comment. One commenter requested that the NRC reinstate a fee ceiling in 10 CFR Part 170 for topical report reviews because a fee ceiling would encourage the submittal of topical reports, thus contributing to the advance of the state-of-the-art in the

nuclear industry and the resultant improvement in nuclear plant safety. The commenter stated that the current uncapped fee structure encourages prolonged and unreasonably detailed technical reviews by NRC contractors.

Response. The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC's costs for topical report reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable fee ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA-92. The policy of assessing 10 CFR Part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

7. Comment. Several comments were received from uranium recovery licensees. Commenters suggested (1) a tiered fee system that would result in full fees for operating facilities and reduced fees for facilities in shutdown or standby status; (2) a licensee review board be established to review NRC fees annually;

(3) the NRC establish standards for its activities, such as a schedule for response intervals for processing licensing actions; and (4) 10 CFR Part 170 bills be itemized to show hours spent, a description of the work performed, the names of individuals who completed the work and the dates the work was performed.

Response. In response to a petition for rulemaking from the American Mining Congress (60 FR 20918), the NRC addressed each of these comments in the Federal Register on April 28, 1995. While denying the petition, the NRC noted that it would continue its current practice of providing available backup data to support Part 170 licensing and inspection billings upon request by the licensee or applicant.

8. Establish reimbursable agreements with Agreement States and other government agencies.

Comment. Several commenters chose to comment on this change, even though the NRC indicated in the proposed rule that the issue of reimbursable agreements falls outside the scope of the proposed rulemaking. The commenters indicated that such action by NRC will affect the levels of fees to be paid by licensees. Those commenting on this change were encouraged by the NRC's initiative in seeking a better way to charge these expenses and supported the NRC's decision to increase the use of reimbursable agreements to eliminate certain costs that do not

benefit NRC licensees. Most of the commenters on this issue, however, encouraged the NRC to proceed immediately to negotiate these reimbursable agreements and not wait until FY 1997 because NRC licensees are currently paying for these costs. One commenter suggested that, in the interest of properly and fairly allocating costs, this program be expanded to cover more, if not all, of the costs of the regulatory support to and oversight of Agreement States (about \$20 million) rather than limit recovery under reimbursable agreement to costs associated with training, travel and technical support provided to Agreement States.

In addition, several commenters believe that the NRC should assess the Environmental Protection Agency (EPA) for NRC work such as review of regulations promulgated by EPA relating to radionuclide emission standards. One commenter stated that costs to support certain activities related to international treaties may best be covered by the Department of State, the Department of Energy or the Agency for International Development.

On April 5 and 6, 1995, the NRC hosted an Agreement State Managers Workshop in Rockville, Maryland. At that meeting, the Agreement States expressed strong opposition to the reimbursable agreement concept, arguing that such agreements would have a negative impact on their programs. The NRC has also received letters from Agreement States expressing strong disagreement with the reimbursable program.

Response. The NRC indicated in the proposed rule (60 FR 14672; March 20, 1995) that it planned to increase the use of reimbursable agreements with Agreement States and Federal agencies and because this change affected the budget and does not alter fee policies or methods, it falls outside the scope of this rulemaking for FY 1995. It is, however, a subject that has generated strong responses, both positive and negative, on the part of licensees and Agreement States. As indicated previously, this policy does not affect the issuance of this FY 1995 rule and the NRC is proceeding to issue the FY 1995 final rule. The reimbursable agreement issue will be addressed as a separate policy issue in the future.

With respect to the interaction between the NRC and EPA on the promulgation of regulations, the Independent Offices Appropriation Act of 1952, as amended, precludes the NRC from charging fees to Federal agencies for specific services rendered. While the NRC can assess annual fees to Federal agencies holding NRC licenses, the EPA is not considered a licensee of the NRC with respect to regulations promulgated by EPA relating to radionuclide emission standards. Further, NRC interactions with EPA are an integral part of NRC's responsibilities under the Atomic Energy Act. Therefore, NRC must include the costs of this work in its budget and cannot perform such work under reimbursable agreements.

With respect to the NRC's international activities, the NRC budget includes certain international activities that are not directly related to NRC applicants or licensees. These activities are performed because of their benefit to U.S. national interests. The NRC is required to perform some of these activities by the Atomic Energy Act (AEA) and, therefore, must budget for them. Over the past several years, the NRC has considered various means to recover the costs for international activities involving broad U.S. national interests, but has found no viable, fair way to do so. Further, it would not be practical to assess fees to foreign organizations, foreign governments, or to the State Department to whom some of the support is provided. For example, assessment of such fees might create foreign policy tensions that could complicate U.S. goals such as foreign reactor safety and nuclear non-proliferation. Until such time as legislation is enacted allowing the NRC to exclude the cost of international activities from the fee base, the cost of these activities must continue to be recovered from NRC licensees. These costs will be recovered from the broadest base of NRC licensees as described in the response to Comment A.1.

9. Fee deferral policy for standard plant and early site reviews.

Comment. One commenter urged the NRC to reestablish the NRC's previous fee deferral policy for standard plant and early

site reviews in order to encourage the development of standardized designs and in light of the NRC decision to issue designs to be certified through rulemaking rather than by granting a license for the certified design.

Response. The Commission decided in its FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA-92 and reconfirmed its FY 1991 decision. The NRC continues to believe that the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these types of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees, and does not believe the points made by the commenter are sufficient to change current policy.

10. Assessing fees to design certification applicants for costs following the final design approval.

Comment. Two commenters stated that the Commission should revisit its policy decision to charge fees to design certification applicants following the issuance by the NRC staff

of a Final Design Approval (FDA).

Response. The statement of considerations accompanying the proposed rule said that the NRC would charge a vendor 10 CFR Part 170 fees for a design certification to recover all the costs of certification except the costs of any hearing that might be held under 10 CFR 52.51(b) before an Atomic Safety and Licensing Board (60 FR 14673; March 20, 1995). These charges are required by existing rules. The only reason the NRC mentioned these fees in the statement of considerations was to reflect in a widely-read document a policy that NRC had articulated fully only in letters to the vendor applicants in December 1994. The letters were in response to inquiries from three vendors last summer. The vendors, particularly ABB-Combustion Engineering Nuclear Systems (ABB-CE), had argued that all the costs of certification should be recovered through annual fees charged to the NRC's current power reactor licensees. ABB-CE, which received an FDA last year for the System 80+ and has applied for certification of the same design, wrote extensive comments on what NRC said about certification fees in the statement of considerations.²

Having considered ABB-CE's arguments, which were largely those ABB-CE had made last summer, the NRC has decided not to change the existing rules and policy on this issue. Although

²Stone & Webster Engineering Corporation submitted brief comments on this issue. Those comments match some of ABB-CE's.

this whole topic is, strictly speaking, not part of this rulemaking, the NRC considers this rulemaking notice to be a useful vehicle for informing a larger public in some detail of ABB-CE's arguments and our responses. NRC's statements here are largely a repetition of arguments NRC made in the letters to the vendors and in a February 24, 1995, letter to the Senate Committee on Appropriations.

Comment. ABB-CE charges that "NRC is proposing to change its fee rules in the middle of the process to the detriment of certification applicants" (Comments at 10)

Response. Section 170.21 of the Commission's regulations has long explicitly listed standard design "certifications" among the regulatory actions for which "full cost" will be recovered through fees charged to applicants. See 10 CFR 170.21 (1994), Schedule of Facility Fees, heading B, "Standard Reference Design Review". This policy has been the law since Part 52 was first promulgated. (See 54 FR 15372, 15399; April 18, 1989.) Even when, in the past, 10 CFR Part 170 called for deferring payment of fees until a utility referenced the certified design, 10 CFR Part 170 clearly said that the vendor would have to pay the "full cost of review for a standardized design approval or certification." 10 CFR 170.12(e)(2)(1) (emphasis added).

Comment. ABB-CE's most important argument for changing

long-standing policy is that, according to ABB-CE, there is no benefit to ABB-CE in certification, except perhaps an "indirect" benefit of making the certified design attractive to U.S. utilities. (Comments at 4) ABB-CE says, "With the issuance of NRC's FDA in July 1994, ... System 80+ constitutes a complete and approved standardized design which, without design certification rulemaking, has been accepted for bidding in the global marketplace." (Comments at 2) ABB-CE also argues that the nuclear utilities and their ratepayers and stockholders are the "direct" beneficiaries of certification, because it provides them with greatly reduced licensing risk, and because it contributes to the "continued viability ... of an important energy option" and to the maintenance of the nuclear servicing/supply sector infrastructure. (Comments at 4)

Response. While the utilities may benefit from certifications, the vendor is more likely to benefit than is any given utility. The NRC knows neither whether, nor how many, applicants for combined construction permits and operating licenses (COLs) will benefit from a given certification. Certainly, not all current power reactor licensees will reference every certified design, and so current licensees will not benefit from every certification. If the design is referenced, the vendor will benefit directly, but most utilities will not. The NRC believes that had ABB-CE not had a reasonable expectation of deriving benefits from the certification, ABB-CE would not have

applied for it.

Comment. ABB-CE points out that the vendor applicant does not become a "holder" of the design certification. In fact, a vendor other than the one that applied for certification can, as a matter of law, supply the certified design to a COL applicant. ABB-CE believes that this situation is incompatible with the notion that the original vendor is the primary beneficiary of the certification.

Response. The NRC agrees that the design certification applicant does not become a "holder" of the design certification. However, several things will make it difficult for a vendor other than the certification applicant to supply the design to a utility. First, proprietary information is protected during the certification proceeding (see 10 CFR 52.51(c)). Second, any vendor that supplies a design to an applicant for a COL must be prepared to provide the NRC with a large amount of design information not contained in the rule certifying the design. This information includes the detailed design of site-specific portions of the plant, and "information normally contained in certain procurement specifications and construction and installation specifications" (see 10 CFR 52.63(c)). Third, any vendor supplying a COL applicant a certified design which another vendor brought to certification must pay part of any deferred fees the original vendor owes (see 10 CFR 170.12(e)(2)(i)).

Fourth and last, the original vendor's superior knowledge of the design will give that vendor a great advantage over competitors.

Comment. ABB-CE also argues that 10 CFR Part 170 fees should not be charged for a certification rulemaking because such a rulemaking is "generic." ABB-CE points out that the Commission has said that it will not charge 10 CFR Part 170 fees for "generic rulemaking and guidance (e.g., 10 CFR Part 52 and Regulatory Guides) for standard plants ..." (56 FR 31478; July 10, 1991.) "... NRC has used the certification," ABB-CE says, "... to resolve broadbased policy issues that otherwise would have required independent public rulemaking proceedings." (Comments at 7) ABB-CE goes so far as to say that "nearly all of the procedural and substantive provisions in the proposed rule for System 80+ are similar or identical to those for the ABWR." (Comments at 6)

Response. The proposed rules which would certify the System 80+ and the ABWR are no more generic than licenses certifying the same designs would have been.³ The resolutions of policy issues in the proposed rules are resolutions specific to those two designs. Moreover, the two proposed rules are quite different. It is important to understand that the few pages of the proposed

³It might have been difficult, if not impossible, for the System 80+ to be certified by license. Section 103d of the Atomic Energy Act says in part, "No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government."

rules which appeared in the Federal Register are only small parts of the rules. Both will incorporate by reference "Tiers" 1 and 2 of the complete designs. Thus the proposed rules are substantively as different as the designs themselves. Even the portions published in the Federal Register have no legal force with respect to other designs.

The NRC did state that 10 CFR Part 170 fees would not be charged for "generic rulemakings (e.g., 10 CFR Part 52) on standard plants." However, as the parenthetical reference to 10 CFR Part 52 shows, the NRC was using the phrase "generic rulemaking" to refer to rulemaking which, like 10 CFR Part 52 itself, applies to all, or at least many, designs.

Comment. ABB-CE asserts that the whole of a design certification rulemaking should be regarded as a "contested hearing" and thus have no 10 CFR Part 170 fees charged in connection with it. ABB-CE's argument is, first, that under the Administrative Procedure Act (APA), notice and comment rulemaking constitutes a "hearing", and second, that the rulemaking surely will be "contested", because there will, in all likelihood, be filed "material comments reasonably opposing aspects of the proposed rule." (Comments at 9)

Response. It has long been the policy of the NRC not to charge 10 CFR Part 170 fees for "contested" hearings, namely

those adjudicatory hearings which are not mandated by law. The costs of such hearings are recovered through annual fees imposed under 10 CFR Part 171. The NRC agrees that applicants for design certification should not be charged 10 CFR Part 170 fees for any hearings held before an Atomic Safety and Licensing Board under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification.

However, ABB-CE's position that the whole rulemaking is a "contested hearing" is neither required by law nor consistent with the meaning usually attributed to the phrase "contested hearing" in discussions of NRC matters. The phrase refers to those hearings, or parts of hearings, which are held under Subpart G or Subpart L of 10 CFR Part 2, but which would not take place unless some party outside the agency asked for them. The Supreme Court case cited by ABB-CE for the proposition that every rulemaking is a "contested hearing", US v Florida East Coast Railway, 410 US 224 (1973), says only that notice and comment rulemaking will, in certain circumstances, satisfy a statute's requirement for a rulemaking hearing. The Court's decision does not say that every rulemaking is a hearing.

Comment. ABB-CE argues that charging vendors for the costs of certification is inconsistent with the NRC's recent decision to recover the costs of confirmatory research "related to the design" from the utilities, under 10 CFR Part 171. If NRC

recovers those costs from the utilities, then, argues ABB-CE, NRC should recover all the costs of certification from the utilities, because those costs too are "related to the design."

Response. ABB-CE misconstrues the policy. Its aim is to charge vendors applying for FDAs and certifications of standard designs for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, would be charged to the utilities under 10 CFR Part 171, even if it had a bearing on the review of a standard design. (See 60 FR 14673; March 20, 1995.) There is in this nothing inconsistent with the existing regulations on certification fees. In both cases, the NRC is charging the vendors for what must be done before issuance of the FDA or certification.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is \$525.6 million of which approximately \$22.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$503.6 million in FY 1995 through 10 CFR Part 170

licensing and inspection fees and 10 CFR Part 171 annual fees. This amount to be recovered for FY 1995 is about \$9.4 million less than the total amount to be recovered for FY 1994 and \$15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately \$141.1 million will be recovered in FY 1995 from the fees assessed under 10 CFR Part 170. The remaining \$362.5 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1995.

Recognizing that OBRA-90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA-92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the Federal Register on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90

percent of the budget and eliminate the requirement that NRC assess 10 CFR Part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is amending 10 CFR Parts 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These final changes are summarized as follows and detailed in the following sections.

1. The method for allocating the budgeted costs that cause fairness and equity concerns is changed. Approximately \$56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. These costs will be treated similar to overhead and distributed to the broadest base of NRC licensees based on the percent of the budget for each class. As a result, power reactors will pay a greater percentage

of these costs.

2. The selected materials inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as "flat" inspection fees in 10 CFR 170.31, are eliminated and the inspection costs are included with the annual materials fees in 10 CFR 171.16(d). These actions will streamline the license fee process and provide more predictable fees.

3. The methodology for calculating the professional hourly rate is changed to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are established instead of a single rate.

4. The methodology for calculating annual fees for power reactors, fuel facilities and uranium recovery licensees is changed to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. NRC small entity and lower-tier size standards are modified for annual fee purposes.

6. The proration provision in 10 CFR 171 has been amended to allow proration of annual fees when materials licenses are downgraded during the year.

As a result of the reduced budget amount to be recovered for FY 1995, increased 10 CFR Part 170 fee collections from power reactors, and these final changes, the annual fees for a large majority of the licensees have been reduced. The following provides illustrative examples of the changes in the annual fees.

<u>Class of Licensees</u>	<u>FY 1994 Annual Fee</u>	<u>FY 1995 Annual Fee</u>
Power Reactors	\$3,078,000	\$2,936,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF ₆ Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
<u>Typical Materials Licenses</u>		
Radiographers	19,170	13,900
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,200

To help stabilize fees, beginning in FY 1996, the NRC will adjust the annual fees only by the percent change in NRC's total budget. The annual fees in this final FY 1995 rule will be used as a base, and the percentage change (plus or minus) in the NRC total FY 1995 budget will be applied to all annual fees for the next four years (FY 1996-FY 1998 and FY 1999 if OBRA-90 is extended) unless there is a substantial change in the total NRC

budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The decision on whether to establish a new baseline will be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR Part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA-90. Therefore, as in FYs 1991-1994 the fees will become effective 30 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of Section 171.17 for new licensees and requests for termination. The annual fees for both reactor and material licensees are prorated based on (1) the date applications are filed during the FY to terminate a license or obtain a possession-only license

(POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services.

Four amendments have been made 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. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, § 170.11 is amended to conform it to section 161w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge Part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices

Appropriation Act, 31 U.S.C. 9701.

Second, the current method of calculating the 10 CFR Part 170 professional hourly rate is revised. Currently, there is one professional hourly rate established in § 170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was \$133 per hour for FY 1994. The NRC has established two professional hourly rates for FY 1995, which will be used to determine the Part 170 fees. The NRC has established a rate of \$123 per hour (\$214,765 per direct FTE) for the reactor program. This rate is applicable to those activities covered by 10 CFR Part 170.21 of the fee regulations. A second rate of \$116 per hour (\$203,096 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to those activities covered by 10 CFR Part 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF.

The two rates are based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel

that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) are assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concept is discussed more fully in Section IV -- Section-by-Section Analysis.

Third, the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees are revised to reflect both the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are based on the average cost method (flat fees).

Based on evaluation of the historical data related to the

average number of professional staff hours needed to complete materials licensing actions, the NRC has increased the fees in some categories and decreased the fees in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The revised licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the nuclear materials professional hourly rate for FY 1995 of \$116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals increase in over 70 percent of the cases.

Fourth, the NRC is streamlining the fee program and improving the predictability of fees by eliminating the materials "flat" inspection fees in § 170.31 and including the cost of the inspections in 10 CFR Part 171. Eliminating the 10 CFR Part 170 materials "flat" fees recognizes that the "regulatory service" to licensees, referred to in OBRA-90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and

other activities necessary to regulate classes of licensees. This action does not result in any net fee increases for affected licensees and will provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The materials annual fees, which include the cost of inspections, become effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR Part 170 fee for inspections conducted in FY 1995 will receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR Part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is (1) establishing two 10 CFR Part 170 hourly rates; (2) revising the licensing fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service; and (3) eliminating the materials "flat" inspection fees in §170.31 and including the costs of inspections with the materials annual fees in §171.16(d), or with the reciprocity application fee in §170.31, fee Category 16.

B. Amendments to 10 CFR 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 NRC.

Ten amendments have been made to 10 CFR Part 171. First, the NRC is modifying its method for recovering certain budgeted costs. The NRC's February 23, 1994, report to Congress in response to EPA-92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is modifying its current policies for allocating the budgeted costs for these and other activities that cause fairness and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR Part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. The budgeted costs of approximately \$56 million for these activities have been allocated to the broadest base of NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC is allocating the approximately \$56 million in fees for activities that raise fairness and equity concerns to the

broadest base of NRC licensees, based on the budgeted dollars for the class of licensees. By allocating the costs in this way, the entire population of NRC licensees pay the costs. The allocation is based on the amount of the budget directly attributable to a class of licensees. This results in operating power reactors paying approximately 89 percent of the costs of the activities in question with other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials licensees, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 is amended to provide that the NRC will publish the proposed rule in the Federal Register as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in §171.15(d) are revised to reflect a single uniform annual fee. The NRC is streamlining the fee program by assessing one uniform

annual fee for all operating power reactors.

Fifth, as discussed earlier, the annual fees for materials licenses in §171.16(d) include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR Part 170.31.

Sixth, the NRC is refining the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to determine the FY 1995 annual fees for both fuel facility and uranium recovery licensees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The revised methodologies are explained in more detail in Section IV -- Section-by-Section Analysis.

Seventh, the NRC is modifying the lower-tier size standard for those licensees that qualify as a small entity under the NRC's size standards. 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 standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending the NRC's size standards. The NRC adjusted 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 eliminated the separate \$1 million size standard for private practice physicians and applied the 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 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 applies to the types of manufacturing industries that hold an NRC license.

The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in §171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. The existing maximum small entity annual fee of \$1800 is continued for all small entities except those defined as lower-tier small entities in this rule. The existing

lower-tier small entity fee of \$400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than \$350,000, a higher threshold than the current lower-tier level of \$250,000 in gross receipts.

Eighth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994.

Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, 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.

Ninth, § 171.17 is amended to add a proration provision for materials licenses that are downgraded during the year to a lower fee category. This provision would permit those materials licensees who filed applications to downgrade their licenses to a lower fee category during the period October 1 through March 31 of a fiscal year to pay reduced annual fees.

Tenth, § 171.19 is amended to credit the quarterly partial annual fee payments and "flat" inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the two revised professional hourly rates discussed previously in the summary of the changes to 10 CFR Part 170. The 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 changes are consistent with the

Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692-93). For those NRC costs not attributable to a class of licensees, the amendments to 10 CFR Part 171 follow the conferees' guidance which states that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees" (136 Cong. Rec. at H12692-3).

C. FY 1995 Budgeted Costs.

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR Parts 170 and 171 fees are shown in Table I.

Table I
Recovery of NRC's FY 1995 Budget Authority
(Dollars in millions)

<u>Recovery Method</u>	<u>Estimated Amount</u>
Nuclear Waste Fund	\$22.0
Part 170 (license and inspection fees)	141.1
Other receipts	.1

Part 171 (annual fees)	
Power Reactors	262.2
Nonpower Reactors	.3
Fuel Facilities	10.1
Spent Fuel Storage	1.6
Uranium Recovery	1.8
Transportation	4.2
Material Users	24.7 ^{1/}
Rare Earth Facilities	<u>.1</u>

Subtotal Part 171	\$305.0
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Costs remaining to be recovered not identified above	<u>57.4</u>
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Total	\$525.6
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^{1/}Includes \$5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the \$57.4 million remaining to be recovered in Table I, approximately \$5.8 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. The composition of the \$63.2 million is as follows:

Table II

Activities To Be Recovered Through Assessment Of A Surcharge

<u>Activities</u>	<u>Dollars in Millions</u>
Federal Agency Exemption	\$1.6
Nonprofit Educational Exemption	6.1

International Activities	10.5
Small Entity Subsidy	5.8
Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	<u>7.0</u>
Total	\$63.2

The NRC is continuing the existing policy for recovering the \$7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing licensees). The remaining \$56.2 million is distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the \$63.2 million are as follows:

- \$55.2 million to operating power reactors;
- \$2.2 million to fuel facilities;
- \$.6 million to spent fuel storage licensees;
- \$.6 million to transportation licensees;

\$.6 million to uranium recovery facilities; and
\$4.0 million to other materials licensees.

IV. Section-by-Section Analysis

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

Part 170

Section 170.11 Exemptions.

This section is amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge Part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC), as these reactors and facilities are licensed or certified by the NRC. The NRC has been assessing the USEC 10 CFR Part 170 fees under the authority provided in section 161w. of the AEA. In this final rule, the NRC is now amending § 170.11 to conform its regulations to this statutory provision. In all other cases, the NRC is prevented

from charging 10 CFR Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average cost per professional staff hour.

This section is amended to establish two professional staff-hour rates based on FY 1995 budgeted costs--one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all activities that are based on full cost under §170.21 is \$123 per hour, or \$214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials activities that are based on full cost under §170.31 is \$116 per hour, or \$203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The 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 these support costs 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 collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

Table III
FY 1995 Budget Authority to be Included in Hourly Rates
(Dollars in millions)

<u>Salary and Benefits</u>	<u>Reactor Program</u>	<u>Materials Program</u>
Program	\$148.5	\$43.5
Allocated Agency Management & Support	<u>\$39.9</u>	<u>\$11.7</u>
Subtotal	\$188.4	\$55.2
<u>General and Administrative Support (G&A)</u>		
Program Travel and Other Support	\$13.3	\$2.7
Allocated Agency Management and Support	<u>\$73.6</u>	<u>\$21.6</u>
Subtotal	\$86.9	\$24.3
Less offsetting receipts	<u>.1</u>	<u>----</u>

Total Budget Included in Hourly Rate	\$275.2	\$79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	\$214,765	\$203,096
Professional Hourly Rate	\$123	\$116

Dividing the \$275.2 million budget for the reactor program by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of \$214,765 per FTE for FY 1995. Dividing the \$79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of \$203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is \$123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs (\$214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs (\$203,096) by the number of productive hours in one year (1744 hours). The two professional rates of \$123 per hour and \$116 per hour are lower than the FY 1994 rate of \$133 per hour because the budget has been reduced and cost center concepts have been implemented with the effect that more direct FTEs have been charged to the programs.

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

Special Projects, Inspections and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC 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, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this final rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in §170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in §170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of §170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the 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, are assessed at the applicable 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, which are based on full-cost recovery, are modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule will be based on both the professional hourly rate as shown in \$170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Those licensing fees, which are based on the average time to review an application ("flat" fees), are adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from \$133 per hour in FY 1994 to \$116 per hour in FY 1995. The "flat" materials inspection fees in \$170.31 are eliminated and combined with the materials annual fees in \$171.16(d). Because

there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee includes the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments). The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the revised materials program professional hourly rate of \$116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is eliminating materials "flat" inspection fees, the FY 1995

biennial review examined only the average number of hours per licensing action with regard to the 10 CFR Part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine the fees for FY 1995 reflect the changes in the licensing program that have occurred since that time. For example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimis 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.

The licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A

through 15E and 16. Applications filed on or after the effective date of the final rule are subject to the revised fees in this final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$116, as shown in \$170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice.

The language in this section is revised to reflect more accurately when the NRC expects to publish its annual proposed fee rules. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section is revised to indicate that the NRC will publish the proposed rule in the Federal Register as early as is practicable but no later than the third quarter of the fiscal

year.

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section are revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the budgeted costs that are allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one uniform base annual fee that will be assessed to all operating reactors.

The NRC is streamlining the fee program by assessing one uniform base annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based

on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The NRC Office of the Inspector General (OIG), in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. For example, in FY 1991, the difference between the highest and lowest power reactor annual fee was \$229,000 and in FY 1993 the difference was \$96,000. The NRC, for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The uniform annual fee of \$2,936,000 is \$23,000 higher than the lowest fee under the current method, which is less than 1 percent of the \$2.9 million annual fee for an operating power reactor and \$11,000 lower than

the highest fee under the current method. Because of this extremely small difference, the NRC is establishing a single uniform annual fee for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

Table IV

ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES^{1/}

	<u>Program Total</u>		<u>Allocated to Power Reactors</u>	
	<u>Program</u>	<u>Direct</u>	<u>Program</u>	<u>Direct</u>
	<u>(\$,K)</u>	<u>FTE</u>	<u>(\$,K)</u>	<u>FTE</u>
REACTOR PROGRAM				
<u>Cost Center: Reactor Regulation</u>				
Inspections	\$4,350	471.4	\$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	<u>536</u>	<u>42.0</u>
Cost Center Total			\$84,499	1,145.9

Table IV
(Continued)

	<u>Program Total</u>		<u>Allocated to Power Reactors Program</u>	
	<u>Support</u>	<u>Direct</u>	<u>Support</u>	<u>Direct</u>
	<u>(\$,K)</u>	<u>FTE</u>	<u>(\$,K)</u>	<u>FTE</u>
<u>Cost Center: Standard Reactor Designs</u>				
Design Certification	\$6,873	91.6	\$6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	---	3.0	---	3.0
Independent Review	86	10.0	<u>86</u>	<u>10.0</u>
Cost Center Total			\$21,844	124.3
<u>NUCLEAR MATERIALS AND NUCLEAR WASTE PROGRAM</u>				
<u>Cost Center: Fuel Facilities</u>				
Licensing and Inspection	1,304	28.5	----	.1
<u>Cost Center: LLW & Decommissioning</u>				
Licensing and Inspection	50	2.6	----	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	---	<u>331</u>	<u>---</u>
Cost Center Total			\$431	7.6
<u>MANAGEMENT AND SUPPORT PROGRAMS</u>				
<u>Cost Center: Special Technical Programs</u>				
Educational Grants	\$1,050	---	\$1,050	---
Small Business Innovation Research	1,844	---	1,844	---
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	<u>850</u>	<u>.7</u>
Cost Center Total			<u>\$3,744</u>	<u>.7</u>
Reactor Program Total			\$110,518	1,278.6

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	\$385.0 million ^{2/}
LESS ESTIMATED PART 170 POWER REACTOR FEES	\$122.9 million
PART 171 AMOUNT FOR OPERATING POWER REACTORS	<u>\$262.1</u> million
PART 171 BASE FEE FOR EACH OPERATING REACTOR	\$262.1 <u>million</u> 108 reactors = \$2,427,000 per reactor

^{1/} Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE (\$214,765) and adding the program support funds.

Paragraph (b)(3) is revised to establish the base uniform annual fee for each operating power reactor and to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) are amended to show the amount of the budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA-90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

Table V

<u>Category of Costs</u>	<u>FY 1995 Budgeted Costs (\$ In Millions)</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities;	\$10.5
b. Agreement State oversight	6.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan	5.6

activities not recoverable under
10 CFR Part 170

2.	Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a.	Fee Exemption of nonprofit educational institutions;	6.1
b.	Licensing and inspection activities associated with other Federal agencies;	1.6
c.	Costs not recovered from Part 171 for small entities	5.8
3.	Activities supporting NRC operating licensees and Others	
a.	Regulatory support to Agreement States	\$14.2
b.	Decommissioning/Reclamation	<u>6.2</u>
	Total Budgeted Costs	\$63.2

Excluding low-level waste costs totalling \$7 million, the current policy allocates the remaining \$56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA-90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under

the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees will be allocated to a smaller number of materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

Therefore, the NRC is changing the current policy for allocating the costs for activities which have raised fairness and equity concerns among many NRC licensees. The changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go

beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC has allocated the costs in question to the broadest base of NRC licensees that pay annual fees. The allocation is based on the amount of the budget directly attributable to a class of licensees and results in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This change is consistent with the guidance in the Conference Committee Report that accompanied OBRA-90. First, by allocating these costs to the broadest base of NRC licensees, this change is consistent with the Conference Report guidance that: "The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." Second, allocating a higher percentage of these costs to operating power reactors as opposed to other classes of licensees is also consistent with the Conference Report guidance that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitable and practicably contribute to their payment." Allocating these costs to the universe of NRC licenses will minimize the impact of the declining numbers of licenses in any specific class, because the costs will be allocated over the maximum number of licensees.

It will also put in place both a policy that will help mitigate future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

Generic LLW Cost Allocated = $.74 \times \$6,972K = \$5,159K$

Other Activities Allocated = $.89 \times \$56,229K = \underline{\$50,044K}$

Subtotal Budgeted Costs \$55,203K

Less Amount to be Assessed -206K

to Small Older Reactors

Total Budgeted Costs \$54,997K

Total budgeted costs allocated = \$54,997K = \$509,000 per

Total number of operating 108 operating power

reactors reactor

With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with §171.11. The total amount of \$0.2 million to be paid by Big Rock Point has been subtracted from the total amount

assessed operating reactors as a surcharge.

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, will pay a base annual fee of \$2,427,000 and an additional charge of \$509,000 for a total FY 1995 annual fee of \$2,936,000. The annual fee in this final rule is less than the annual fee shown in the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR Part 170 fees.

Paragraph (d) is revised to show the amount of the total FY 1995 uniform annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1995 annual fee for nonpower (test and research) reactors. In FY 1995, \$339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of \$56,500 per operating license. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative

requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at §171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at §171.11(a)(2). The NRC amended §171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC will continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in §171.11.

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. 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 standard levels to mitigate the effects of inflation from 1984 to 1994.

On April 11, 1995 (60 FR 18344), the NRC published a final rule amending its size standards. The size standards are as follows:

(a) A small business is a for-profit concern and is a --

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is --

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts. (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Therefore, the small entity categories in §171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is establishing a new maximum small entity fee for manufacturing industries with 35 to 500 employees at \$1,800 and a lower-tier small entity fee of \$400 is established for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of \$250,000 is 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.

Section 171.16(d) is revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling \$42.5 million

that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel 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 programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery and rare earth classes of licensees are those associated with uranium recovery and rare earth licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

Table VI

ALLOCATION OF NRC FY 1995 BUDGET TO FUEL
FACILITY BASE FEES^{1/}

	Total Program Element		Allocated to Fuel Facility	
	Program Support \$,K	FTE	Program Support \$,K	FTE
<u>Cost Center: Fuel Facilities</u>				
Fuel Fabricators Oversight and Inspections	\$1,698	59.0	\$1,486	56.1
<u>Cost Center: LLW and Decommissioning</u>				
Decommissioning	4,447	50.0	325	1.7
<u>Cost Center: Other Nuclear Materials and Waste</u>				
Independent Analysis of Operating Experience	46	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	--	1.0	--	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
<u>Cost Center: Special Technical Program</u>				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	----
			=====	=====
TOTAL			\$2,066	61.9
<hr/>				
TOTAL BASE FEE AMOUNT ALLOCATED TO FUEL FACILITIES			\$14.6 million ^{2/}	
LESS PART 170 FUEL FACILITY FEES			4.5 million	
PART 171 BASE FEES FOR FUEL FACILITIES			\$10.1 million	

^{1/} Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE (\$203,096) and adding the program support funds.

Table VII

ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES

	Total Program Element		Allocated to Materials Users	
	Program Support \$,K	FTE	Program Support \$,K	FTE
<u>Nuclear Materials & Nuclear Waste Program</u>				
<u>Cost Center: Materials Users</u>				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	\$700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection/Health Effects	1,621	5.3	<u>428</u>	<u>1.4</u>
Cost Center Total			\$1,751	87.7
<u>Cost Center: LLW & Decommissioning</u>				
Licensing & Inspections	50	2.6	---	.2
Decommissioning	214	32.8	69	3.5
Radiological Surveys	1,653	---	<u>372</u>	<u>---</u>
Cost Center Total			441	3.7
<u>Cost Center: Other Nuclear Materials</u>				
Analysis of Operational Experience	\$346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews	---	1.0	--	.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation	---	16.0	<u>---</u>	<u>4.4</u>
Cost Center Total			<u>\$691</u>	<u>32.4</u>
Total Program			\$2,863	123.8
<u>Management & Support Program</u>				
<u>Cost Center: Special Technical Programs</u>				
Nuclear Material Management & Safeguard Systems	1,165	1.0	<u>74</u>	<u>.1</u>
Total All Programs			\$2,957	123.9

BASE AMOUNT ALLOCATED TO MATERIALS USERS	\$28.1 million ²
LESS PART 170 MATERIALS USERS FEES	<u>3.4</u> million
PART 171 BASE FEES FOR MATERIALS USERS	\$24.7 million

^{1/} Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE (\$203,096) and adding the program support funds.

Major Fuel Facilities

The allocation of the NRC's \$10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore establishing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear material type, enrichment, form, quantity, and use/associated activity) and according to the scope, depth of coverage and rigor of generic regulatory

programmatic effort applicable to each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid Part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear

material and use/associated activity. Next, the category/license information is used to determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	<u>Number of Facilities</u>	<u>Relative Weight Per Facility Safety</u>	<u>Safeguards</u>
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF ₆ Conversion	1	.30	----
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the \$10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

<u>Type of Facility</u>	<u>Annual Fee</u>
<u>High Enriched Fuel</u>	
Babcock & Wilcox	\$2,569,000
Nuclear Fuel Services	2,569,000
<u>Low Enriched Fuel</u>	
Combustion Engineering (Hematite)	\$1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
<u>Limited Operation Facilities</u>	
B&W Fuel Company	\$501,700
<u>UF₆ Conversion</u>	
AlliedSignal Corp.	\$639,200
<u>Other Fuel Facilities</u>	
Babcock & Wilcox	\$340,700
General Atomics	\$340,700
General Electric	\$340,700

Uranium Recovery

Of the \$2.3 million (\$1.8 million in base budget plus \$0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately \$1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In September 1993, DOE became a general

licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing Part 171 annual fees for non-DOE uranium recovery licenses. The methodology identifies three categories of licenses: (1) conventional uranium mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) the operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3) cleanup of contaminated groundwater. Weighted factors were

assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	Number of <u>Facilities</u>	Relative Weight <u>Per Facility</u>
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal	3	.13
incidental to existing		

tailings sites

Using this refined approach, the remaining \$0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2) - Class I facilities	\$60,900
2.A.(2) - Class II facilities	\$34,400
2.A.(2) - Other facilities	\$22,000
2.A.(3) - 11e(2) disposal	\$44,700
2.A.(4) - 11e(2) disposal incidental to existing tailings site	\$7,900

Rare Earth Facilities

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this final rule. For rare earth facilities, the generic and other regulatory costs of \$66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of \$22,000 for each facility.

Spent Fuel Storage Facilities

For spent fuel storage licenses, the costs of \$2.2 million (\$1.6 million in base budget plus \$0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or

general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of \$279,000 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this class. It also represents a fee decrease compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR Part 170 fees.

Materials Licenses

To equitably and fairly allocate the \$24.7 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share (\$2.8 million) of the surcharge, the NRC has continued to base the annual fee on the 10 CFR Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee = (Application Fee + Average Inspection
Cost/Inspection Priority) x Constant + (Unique Category Costs).

The constant is the multiple necessary to recover \$24.7 million and is 1.7 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1995, unique costs of approximately \$1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is combining the "flat" material inspection fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171. This is being done to recognize that the "regulatory service" to licensees referred to in OBRA-90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA-90, the NRC believes that materials licensees' "flat" inspection fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in effect, already been implemented for most materials licensees. First, materials

licensees currently pay a "flat fee" per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials license fee category currently pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. Because certain materials FY 1995 annual fees include inspection costs, those materials licensees who paid a "flat" 10 CFR Part 170 inspection fee for inspections conducted in FY 1995 will receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR Part 171. Those Agreement States licensees who paid an inspection fee for inspections conducted in FY 1995 will not receive a credit/refund because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted

costs to the broadest base of NRC licensees rather than to materials licensees as discussed earlier. Second, the professional hourly rate for the materials program has decreased from \$133 per hour to \$116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of the average annual inspection costs with the annual fee. The annual fees for some categories in this final rule have decreased compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR Part 170 fees.

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.

Transportation

To recover the \$4.7 million attributable to the transportation class of licensees, \$1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities (\$3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is

\$77,800 for users and fabricators and \$1,000 for users only.

The amount or range of the FY 1995 annual fees for all materials licensees is summarized as follows:

Materials Licenses
Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel	\$2,569,000
Part 70 - Low enriched fuel	\$1,261,000
Part 40 - UF ₆ conversion	\$639,200
Part 40 - Uranium recovery	\$22,000 to \$60,900
Part 30 - Byproduct Material	\$480 to \$23,200 ^{1/}
Part 71 - Transportation of Radioactive Material	\$1,000 to \$77,800
Part 72 - Independent Storage of Spent Nuclear Fuel	\$279,000

^{1/} Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$415,300.

Surcharge

Section 171.16(e) is amended to establish the additional charge which is included in the annual fees shown in §171.16(d) of this final rule. The Commission is continuing the approach established in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW

generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in §171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of \$7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of costs for LLW disposed of by Agreement State licensees. Of the \$7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount (\$5.7 million) is allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of \$48,000 per facility. Thus, the LLW charge will be \$48,000 per HEU, LEU, UF₆ facility, and each of the other three fuel facilities. The remaining \$1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: \$1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the \$1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17,

which also generate and/or dispose of low-level waste, is \$21,000.

Certain costs that caused fairness and equity concerns are allocated to materials licensees based on the percent of the budget that each class comprises. This allocation approach was explained in the previous explanation of changes to §171.15 of this section.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.17 Proration.

10 CFR 171.17 is amended to add a proration provision to allow for proration of the annual fee for a downgraded materials license upon request of the licensee. A proration request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration

is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded materials license filed beyond that date will not be considered.

Annual fees for materials licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for materials licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Materials licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that fiscal year.

Section 171.19 Payment.

This section is revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid inspection fees for inspections that were performed in FY 1995, whereas this final rule includes such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this

matter, the NRC has stated that 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).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final 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 final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final 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 to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held that--

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1995 budget of \$525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(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.

The NRC is establishing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in annual fees of about \$20,000 between the highest and lowest annual fee assessed under the current method is small enough relative to the size of the \$2.9 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

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).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in Skinner v. Mid-American Pipeline Co., 109 S. Ct. 1726 (1989), and the denial of certiorari in Florida Power and Light, all of the lawsuits were withdrawn.

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).

VIII. 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 final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The final rule results in a decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is

not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or 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.

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.

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. 552 and 553, the NRC is adopting 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, 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. In Section 170.11, paragraph (a) (5) is revised to read
as follows:

§170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of
compliance, or other approval applied for by, or issued to, a
Government agency, except where the Commission is authorized by
statute to charge such fees.

* * * * *

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 the following applicable professional staff-hour rates:

Reactor Program (\$ 170.21 Activities)	\$123 per hour
Nuclear Materials and Nuclear Waste Program (\$ 170.31 Activities)	\$116 per hour

4. In §170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are 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

Fees^{1/} 2/

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 \$7,500

Amendment \$7,500

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)-(8).

Application-new license \$4,600
Amendment \$4,600

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

Application-new license \$2,900
Amendment \$2,900

4. Application for export or import of other facility components and equipment not requiring Commission review, 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 pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 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. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

2/ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended.

For 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 the final rule will be determined at the professional rates in effect at the time the service was provided. 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 any 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 applicable rate established in \$170.20. In no event will the total review costs be less than twice the hourly rate shown in \$ 170.20.

2/ Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or followup of a licensed program.

Inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Inspections that result from third-party allegations will not be subject to fees.

4/ Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

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

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

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.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

<u>Category of materials licenses and type of fees^{1/}</u>	<u>Fee^{2/ 3/}</u>
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1. Special nuclear material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing

possession only:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:4'

Application - New license	\$530
Renewal	\$720
Amendment	\$290

- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as

defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:⁴

Application - New license	\$580
Renewal	\$650
Amendment	\$280

E. Licenses for construction and operation of a uranium enrichment facility.

Application	\$125,000
License, Renewal, Amendment . . .	Full Cost
Inspections	Full Cost

2. Source material:

A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or

thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- (2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).

License, renewal, amendment	Full Cost
Inspections	Full Cost

- (3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).

License, renewal, amendment Full Cost
Inspections Full Cost

B. Licenses which authorize the possession, use and/or
installation of source material for shielding:

Application - New license \$150
Renewal \$170
Amendment \$230

C. All other source material licenses:

Application - New license \$2,700
Renewal \$1,500
Amendment \$400

3. Byproduct material:

A. Licenses of broad scope for possession and use of
byproduct material issued pursuant to Parts 30 and 33
of this chapter for processing or manufacturing of
items containing byproduct material for commercial
distribution:

Application - New license \$2,900
Renewal \$1,900

Amendment \$530

- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license \$1,200
Renewal \$2,400
Amendment \$560

- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New license \$3,900
Renewal \$3,100
Amendment \$500

- 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:

Application - New license	\$1,500
Renewal	\$480
Amendment	\$420

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New license	\$1,200
Renewal	\$820
Amendment	\$350

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$1,500
Renewal	\$1,100
Amendment	\$360

- G. Licenses for possession and use of 10,000 curies or

more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$5,800
Renewal	\$5,200
Amendment	\$750

- H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	\$2,300
Renewal	\$2,700
Amendment	\$990

- I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct

material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	\$4,300
Renewal	\$2,600
Amendment	\$840

- J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,500
Renewal	\$1,500
Amendment	\$280

- K. Licenses issued pursuant to Subpart B of Part 32 of

this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,300
Renewal	\$1,300
Amendment	\$300

- L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:

Application - New license	\$4,100
Renewal	\$3,300
Amendment	\$640

- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application - New license	\$1,500
Renewal	\$1,700
Amendment	\$590

N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:

Application - New license	\$1,800
Renewal	\$1,900
Amendment	\$570

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:

Application - New license	\$3,700
Renewal	\$3,000
Amendment	\$700

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application - New license	\$530
Renewal	\$720
Amendment	\$290

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 authorized to receive or dispose of waste material:

License, renewal, amendment . . .	Full Cost
Inspections	Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear

material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license	\$3,200
Renewal	\$2,300
Amendment	\$390

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license	\$1,700
Renewal	\$1,200
Amendment	\$280

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other

than field flooding tracer studies:

Application - New license	\$3,100
Renewal	\$4,000
Amendment	\$610

- B. Licenses for possession and use of byproduct material for field flooding tracer studies:

License, renewal, amendment . . . Full Cost

6. Nuclear laundries:

- A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application - New license	\$4,900
Renewal	\$1,900
Amendment	\$770

7. Human use of byproduct, source, or special nuclear material:

- A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed

Renewal	\$1,400
Amendment	\$430

8. Civil defense:

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application - New license	\$730
Renewal	\$630
Amendment	\$340

9. Device, product, or sealed source safety evaluation:

- A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

Application - each device	\$3,200
Amendment - each device	\$1,200

- B. 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:

Application - each device \$1,600

Amendment - each device \$580

- C. Safety evaluation of sealed sources containing
byproduct material, source material, or special nuclear
material, except reactor fuel, for commercial
distribution:

Application - each source \$700

Amendment - each source \$230

- D. Safety evaluation of sealed sources 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:

Application - each source \$350

Amendment - each source \$120

10. Transportation of radioactive material:

- A. Evaluation of casks, packages, and shipping containers:

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

B. Evaluation of 10 CFR Part 71 quality assurance
programs:

Application - Approval \$320
Renewal \$340
Amendment \$240
Inspections Full Cost

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

12. Special projects:^{2/}

Approvals and preapplication/
licensing activities Full Cost
Inspections Full Cost

13. A. Spent fuel storage cask Certificate of Compliance:

Approvals Full Cost
Amendments, revisions, and

supplements Full Cost
Reapproval Full Cost

B. Inspections related to spent fuel storage cask
Certificate of Compliance Full Cost

C. Inspections related to storage of spent fuel under
§72.210 of this chapter Full Cost

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 of this chapter:

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

15. Import and Export licenses:

Licenses issued pursuant to 10 CFR Part 110 of this chapter
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 110.40(b).

Application-new license	\$7,500
Amendment	\$7,500

- 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 110.41(a)(2)-(8).

Application-new license	\$4,600
Amendment	\$4,600

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

Application-new license	\$2,900
Amendment	\$2,900

- D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.

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

E. 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
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16. Reciprocity:

Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of	
Form 241)	\$1,100
Renewal	N/A
Revisions	\$200

^{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 certain inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive 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 reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 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, 4D, 5B, 10A, 11, 12, 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, 4D, 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 category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) Inspection fees - Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under §170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with §170.12(g).

^{2/} Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders.

However, fees will be charged for approvals issued under 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.

^{2/} 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 the final rule will be determined at the professional rates in effect at the time the service was provided. For 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 applicable rate established in \$170.20. The minimum total review cost is twice the hourly rate shown in \$170.20.

²⁰ 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.

²¹ Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety 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.

6. 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).

7. Section 171.13 is revised to read as follows:

§171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the Federal Register as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with §171.19 except as provided in §171.17. Quarterly payments of the annual fees of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In §171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the

Federal FY in which the fee is due, except for those test and research reactors exempted in §171.11(a)(1) and (a)(2).

(b) ***

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is \$2,427,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor to recover the budgeted costs for the following:

(i) 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 low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR Part 170

licensing and inspection fees 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.

(2) The FY 1995 surcharge for each operating power reactor is \$509,000. This amount is calculated by dividing the total cost for these activities (\$55.0 million) by the number of operating power reactors (108).

(d) The FY 1995 Part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c) (2) of this section, is \$2,936,000. Thereafter, annual fees will be assessed in accordance with §171.13.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	\$56,500
Test reactor	\$56,500

9. In §171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§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.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

<u>Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$350,000 to \$5 million	\$1,800
Less than \$350,000	\$400
<u>Manufacturing entities that have an average of 500 employees or less</u>	
35 to 500 employees	\$1,800

Less than 35 employees	\$400
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Small Governmental Jurisdictions
(Including publicly supported
educational institutions)
(Population)

20,000 to 50,000	\$1,800
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Less than 20,000	\$400
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Educational Institutions that
are not State or Publicly
Supported, and have 500 Employees
or Less.

35 to 500 employees	\$1,800
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Less than 35 employees	400
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(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is \$1,800 for each category applicable to the license(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

(See footnotes at end of table)

Category of materials licenses

Annual Fees^{1. 2. 3}

1. Special nuclear material:

A. (1) Licenses for possession and use
of U-235 or plutonium for fuel
fabrication activities.

(a) Strategic Special Nuclear Material:

Babcock & Wilcox	SNM-42	\$2,569,000
Nuclear Fuel Services	SNM-124	2,569,000

(b) Low Enriched Uranium in Dispersable Form Used for
Fabrication of Power Reactor Fuel:

Combustion Engineering

(Hematite)	SNM-33	\$1,261,000
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General Electric

Company	SNM-1097	1,261,000
Siemens Nuclear Power	SNM-1227	1,261,000
Westinghouse Electric	SNM-1107	1,261,000
Company		

- (2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

B&W Fuel Company	SNM-1168	\$501,700
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(b) All Others:

Babcock & Wilcox	SNM-414	\$340,700
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General Atomics	SNM-696	340,700
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General Electric	SNM-960	340,700
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- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). \$279,000
- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. \$1,300
- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute

a critical quantity, as defined in
§ 150.11 of this chapter, for which
the licensee shall pay the same fees
as those for Category 1.A.(2). \$3,000

E. Licenses for the operation of a
uranium enrichment facility. \$ N/A^{11/}

2. Source material:

A.(1) Licenses for possession and use of
source material for refining uranium
mill concentrates to uranium
hexafluoride. \$639,200

(2) Licenses for possession and use of
source material in recovery operations
such as milling, in-situ leaching,
heap-leaching, ore buying stations,
ion exchange facilities and in processing
of ores containing source material for
extraction of metals other than uranium
or thorium, including licenses authorizing
the possession of byproduct waste material
(tailings) from source material recovery
operations, as well as licenses authorizing

the possession and maintenance of a facility
in a standby mode.

Class I facilities' \$60,900

Class II facilities' \$34,400

Other facilities' \$22,000

(3) Licenses that authorize the receipt, from other
persons, of byproduct material as defined in Section
11e.(2) of the Atomic Energy Act for possession and
disposal, except those licenses subject to the fees in
Category 2.A.(2) or Category 2.A.(4). \$44,700

(4) Licenses that authorize the receipt, from other
persons, of byproduct material as defined in Section
11e(2) of the Atomic Energy Act for possession and
disposal incidental to the disposal of the uranium
waste tailings generated by the licensee's milling
operations, except those licenses subject to the fees
in Category 2.A.(2). \$7,900

B. Licenses which authorize only the
possession, use and/or installation of
source material for shielding. \$480

C. All other source material licenses. \$8,600

3. Byproduct material:

- A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$16,400
- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$5,500
- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession

and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$11,100

- 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 also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$4,400
- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). \$3,100
- F. Licenses for possession and use of less than 10,000 curies of byproduct material

in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$3,800

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$19,400

H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to

persons exempt from the licensing
requirements of Part 30 of this
chapter.

\$5,000

- I. Licenses issued pursuant to Subpart A
of Part 32 of this chapter to distribute
items containing byproduct material or
quantities of byproduct material that
do not require device evaluation to
persons exempt from the licensing
requirements of Part 30 of this chapter,
except for specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
exempt from the licensing requirements
of Part 30 of this chapter. \$8,800

- J. Licenses issued pursuant to Subpart B
of Part 32 of this chapter to distribute
items containing byproduct material that
require sealed source and/or device
review to persons generally licensed
under Part 31 of this chapter, except
specific licenses authorizing
redistribution of items that have
been authorized for distribution to

persons generally licensed under
Part 31 of this chapter. \$3,700

K. Licenses issued pursuant to Subpart B
of Part 31 of this chapter to
distribute items containing byproduct
material or quantities of byproduct
material that do not require sealed
source and/or device review to persons
generally licensed under Part 31 of
this chapter, except specific licenses
authorizing redistribution of items
that have been authorized for distribution
to persons generally licensed under
Part 31 of this chapter. \$3,200

L. Licenses of broad scope for possession
and use of byproduct material issued
pursuant to Parts 30 and 33 of this
chapter for research and development
that do not authorize commercial
distribution. \$12,100

M. Other licenses for possession and use
of byproduct material issued pursuant
to Part 30 of this chapter for research

and development that do not authorize
commercial distribution. \$5,400

N. Licenses that authorize services for
other licensees, except:

- (1) Licenses that authorize only
calibration and/or leak testing
services are subject to the fees
specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal
services are subject to the fees specified
in fee Categories 4A, 4B, 4C, and
4D. \$6,000

O. Licenses for possession and use of
byproduct material issued pursuant to
Part 34 of this chapter for industrial
radiography operations. This category
also includes the possession and use of
source material for shielding authorized
pursuant to Part 40 of this chapter when
authorized on the same license. \$13,900

P. All other specific byproduct material
licenses, except those in Categories 4A

through 9D.

\$1,700

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 authorized to receive or dispose of waste material.

\$100,900^{5/}

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the

purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. \$14,300

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. \$7,600

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. \$8,100

- B. Licenses for possession and use of byproduct material for field flooding

tracer studies.

\$13,000

6. Nuclear laundries:

- A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. \$14,500

7. Human use of byproduct, source, or special nuclear material.

- A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. \$10,200

- B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter

authorizing research and development,
including human use of byproduct
material except licenses for byproduct
material, source material, or special
nuclear material in sealed sources
contained in teletherapy devices. This
category also includes the possession
and use of source material for shielding
when authorized on the same license.^{2/} \$23,200

- C. Other licenses issued pursuant to
Parts 30, 35, 40, and 70 of this
chapter for human use of byproduct
material, source material, and/or
special nuclear material except
licenses for byproduct material,
source material, or special nuclear
material in sealed sources contained
in teletherapy devices. This
category also includes the possession
and use of source material for
shielding when authorized on the
same license.^{2/} \$4,600

8. Civil defense:

A. Licenses for possession and use of
byproduct material, source material,
or special nuclear material for civil
defense activities. \$1,800

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. \$7,100

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. \$3,700

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

material, or special nuclear material,
except reactor fuel, for commercial
distribution. \$1,500

- D. Registrations issued for the safety
evaluation of sealed sources
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. \$770

10. Transportation of radioactive material:

- A. Certificates of Compliance or other
package approvals issued for design of
casks, packages, and shipping containers.

Spent Fuel, High-Level Waste, and N/A^{6/}
plutonium air packages

Other Casks N/A^{6/}

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

	Users and Fabricators	\$77,800
	Users	\$1,000
11.	Standardized spent fuel facilities.	N/A ^{5/}
12.	Special Projects	N/A ^{5/}
13.	A. Spent fuel storage cask Certificate of Compliance.	N/A ^{5/}
	B. General licenses for storage of spent fuel under 10 CFR 72.210.	\$279,000
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/}
16.	Reciprocity	N/A ^{8/}
17.	Master materials licenses of broad scope issued to Government agencies.	\$415,300

18. Department of Energy:

A. Certificates of Compliance	\$1,200,000 ^{10/}
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	\$1,937,000

^{1/} Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

^{2/} Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

^{3/} For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

^{4/} A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

^{5/} Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

^{6/} Standardized spent fuel facilities, Part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the

users of the designs, certificates, and topical reports.

^{2/} Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

^{8/} No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

^{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.

^{11/} No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of \$48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of

\$1,400 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.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of \$21,000 has been added to fee Category 17.

(2) To recover those budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals, a surcharge has been added for the following:

(i) 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

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees 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.

10. In §171.17, paragraph (b) is revised to read as follows:

§171.17 Proration.

(b) Materials licenses (including fuel cycle licenses).

(1) New licenses and terminations. The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

(2) Downgraded licenses.

(i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which

applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

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

§171.19 Payment.

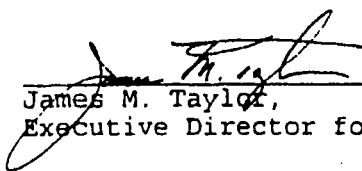
(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or 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 accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of \$100,000 or more and described in the Federal Register notice pursuant to §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than \$100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of June,
1995.

For the Nuclear Regulatory Commission.


James M. Taylor,
Executive Director for Operations.

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 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-for-profit 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.



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

January 29, 1996

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees would decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. This notice provides for a 30-day public comment period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Representative Frank Pallone

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1-16



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

January 29, 1996

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees would decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees.

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Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over a horizontal line.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Senator Bob Graham



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

January 29, 1996

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees would decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees.

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Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Senator J. Bennett Johnston



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 29, 1996

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees would decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. This notice provides for a 30-day public comment period.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over a horizontal line.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Representative Martin Olav Sabo



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

January 29, 1996

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

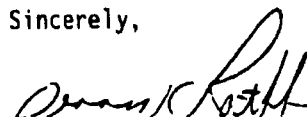
The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees would decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. This notice provides for a 30-day public comment period.

Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Senator J. James Exon



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 29, 1996

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:


The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees would decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. This notice provides for a 30-day public comment period.

Sincerely,


Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Representative Tom Bevill

IDENTICAL LETTERS SENT TO:

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

cc: Senator Bob Graham

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

cc: Representative Frank Pallone

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

cc: Representative Tom Bevill

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

cc: Senator J. Bennett Johnston

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

cc: Representative Martin Olav Sabo

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

cc: Senator J. James Exon

SEE NEXT PAGE FOR DISTRIBUTION AND CONCURRENCE

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF39

Revision of Fee Schedules; 100% Fee Recovery, FY 1996

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) 1996 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1996 is approximately \$462.3 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.

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Because OBRA-90 requires that NRC collect the FY 1996 fees by September 30, 1996, 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: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678). Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

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: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

I. Background.

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

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted 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 fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of

applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

On June 20, 1995 (60 FR 32218), the NRC published its final rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund.

The NRC stated in the FY 1995 final rule that in an effort to stabilize annual fees, beginning in FY 1996 the NRC would adjust the annual fees 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 stated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other receipts as well as on the number of licensees paying fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and

annual fees to recover approximately 100 percent of its FY 1996 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1996, the NRC's budget authority is \$473.3 million, of which approximately \$11.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$462.3 million in FY 1996 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. This amount to be recovered for FY 1996 is about \$41.3 million less than the total amount to be recovered for FY 1995 and \$50.7 million less when compared to the amount to be recovered for FY 1994. The NRC estimates that approximately \$120.3 million will be recovered in FY 1996 from fees assessed under 10 CFR Part 170 and other offsetting receipts. The remaining \$342 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1996.

As a result of the reduced amount to be recovered for FY 1996 and the proposed changes outlined in this section, the FY 1996 annual fees for all licensees have been reduced by about 6 percent compared to the annual fees assessed for FY 1995. The following examples illustrate changes in annual fees.

<u>Class of Licensees</u>	<u>FY 1995 Annual Fee</u>	<u>FY 1996 Annual Fee</u>
Power Reactors	\$2,936,000	\$2,747,000
Nonpower Reactors	56,500	52,900

High Enriched Uranium Fuel Facility	2,569,000	2,404,000
Low Enriched Uranium Fuel Facility	1,261,000	1,180,000
UF ₆ Conversion Facility	639,200	598,100
Uranium Mills	60,900	57,000
<u>Typical Materials Licenses</u>		
Radiographers	13,900	13,000
Well Loggers	8,100	7,500
Gauge Users	1,700	1,600
Broad Scope Medical	23,200	21,700

The NRC is also proposing to continue its streamlining of the fee structure and process for materials licenses which began in FY 1995 and make other changes as discussed in Sections A and B. Among the changes would be a change in the billing date for the annual fees imposed on many materials licensees.

As in FY 1991-1995, the fees will become effective 30 days after publication of the final rule in the Federal Register. The NRC would send a bill for the amount of the annual fee upon publication of the FY 1996 final rule to the licensee or certificate, registration or approval holder not subject to quarterly billing (those licensees who pay annual fees of less than \$100,000) and whose anniversary date (the first day of the month in which the original license was issued) is before the effective date of the final FY 1996 rule. For these licensees,

payment would be due on the effective date of the FY 1996 rule. Those materials licensees whose license anniversary date during FY 1996 falls after the effective date of the final FY 1996 rule would be billed during the anniversary month of the license and payment would be due 30 days after the initial invoice is issued.

If the NRC decides not to pursue some or all of these changes, based on the public comments, the respective current fee policies would continue in effect for FY 1996. Comments are also requested on whether the NRC should continue current fee policies in lieu of the changes in this proposed rule.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services.

The NRC proposes four amendments to 10 CFR Part 170. First, the NRC proposes that the two professional hourly rates established in FY 1995 in §170.20 be revised based on the FY 1996 budget. These proposed rates would be based on the FY 1996 direct FTEs and that portion of the FY 1996 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF. These rates are used to determine the Part 170 fees. The NRC is proposing to establish a rate of \$128 per hour (\$223,314 per direct FTE) for the reactor program. This rate is applicable

to all activities whose fees are based on full cost under §170.21 of the fee regulations. A second rate of \$120 per hour (\$209,057 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate is applicable to all materials activities whose fees are based on full cost under §170.31 of the fee regulations.

The two rates continue to be based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Second, the NRC proposes that the current Part 170 licensing and inspection fees in §170.21 and 170.31 for applicants and licensees be adjusted to reflect the changes in the revised hourly rates.

Third, to continue FY 1995 initiatives for streamlining its fee program and improving the predictability of fees, the NRC is proposing to eliminate certain materials "flat" renewal fees in §170.31 and to amend §170.12 accordingly. This proposed action is also consistent with NRC's recent Business Process Reengineering initiative to extend the duration of certain

materials licenses. The NRC published a proposed rule in the Federal Register for comment on September 8, 1995 (60 FR 46784) explaining this initiative. In the September 8, 1995, proposed rule, certain materials licenses would be extended for five years beyond their expiration date. Additionally, comments were requested on the general topic of the appropriate duration of licenses. A final rule was published in the Federal Register on January 16, 1996 (61 FR 1109).

The proposed elimination of 10 CFR Part 170 materials "flat" renewal fees continues to recognize that the NRC's "regulatory service" provided to licensees, as referred to in OBRA-90, is comprised of the total regulatory activities that the NRC determines are needed to regulate a class of licensees. These regulatory activities include not only renewals but also inspections, research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This proposed action does not result in any net fee increases for affected licensees and would provide those licensees with greater fee predictability, a frequent licensee request in comments on past fee rules. The materials annual fees, which include the cost for any renewals, would become effective for FY 1996. Materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 would receive a refund for those payments, as appropriate.

Fourth, the language in §170.31, Category 15, relating to export and import licenses, would be amended to clarify that export and import of materials includes the export and import of radioactive waste. The NRC amended 10 CFR Part 110 effective August 21, 1995 (60 FR 37556; July 21, 1995), to require specific licenses for the export or import of radioactive waste.

In summary, the NRC is proposing to (1) revise the two 10 CFR Part 170 hourly rates; (2) revise the licensing fees assessed under 10 CFR Part 170 to reflect the cost to the agency of providing the service; (3) eliminate the materials "flat" renewal fees in §170.31 and amend §170.12 accordingly; and (4) amend Category 15 in §170.31 to make clear that fees would be assessed for licenses authorizing the export or import of radioactive waste.

B. Amendments to 10 CFR 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 NRC.

The NRC proposes three amendments to 10 CFR Part 171. First, the NRC proposes to amend §§171.15 and 171.16 to revise the annual fees for FY 1996 to recover approximately 100 percent of the FY 1996 budget authority, less fees collected under 10 CFR

Part 170 and funds appropriated from the NWF.

In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC 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. If either case occurred, 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 receipts as well as on the number of licensees paying the fees. The NRC does not believe the changes to the FY 1996 budget compared to the FY 1995 budget warrant establishing new baseline fees for FY 1996. Therefore, the NRC is proposing that the FY 1996 annual fees for all licensees be reduced by 6.4 percent. The 6.4 percent reduction is based on the changes in the budget to be recovered from fees, the amount of the budget recovered for 10 CFR Part 170 fees and other offsetting receipts, and changes in the number of licensees paying annual fees. Table I shows the total budget and fee amounts for FY 1995 and FY 1996.

TABLE I

Calculation of the Percentage Change to the FY 1995 Annual Fees

(Dollars in Millions)

	<u>FY95</u>	<u>FY96</u>
Total Budget	\$525.6	\$473.3
Less NWF	<u>-22.0</u>	<u>-11.0</u>
Total Fee Base	\$503.6	\$462.3
Less Part 170 Fees and Other Receipts	<u>141.1</u>	<u>120.3</u>
Total Annual Fee Amount	\$362.5	\$342.0

As shown in Table I, the total amount to be recovered from annual fees in FY 1996 is \$20.5M (\$342.0-\$362.5) or 5.7 percent less than the amount that was to be recovered from annual fees in FY 1995. This difference is the net change resulting from a reduction in the budget and a reduction in the expected collection from 10 CFR Part 170 fees and other offsetting receipts. The NRC notes that the reduction in 10 CFR Part 170 fees for FY 1996 results primarily from the fact that NRC had a one-time collection of five quarters of 10 CFR Part 170 fees in FY 1995 as a result of changes in our billing practices which permits us to bill for services shortly after they are rendered.

In addition to changes in the budget and 10 CFR Part 170 fees and other receipts, the number of licensees to pay fees in FY 1996 changed compared to FY 1995. Also, the amount of the small entity surcharge (difference between annual fee and small

entity fee) decreased as the annual fees decreased. The changes in the number of licensees in the various classes plus the reduction in the small entity surcharge result in an additional decrease in the annual fee per licensee of 0.7 percent. Thus the total change in the annual fees for FY 1996 compared to FY 1995 is a decrease of 6.4 percent (5.7 percent plus 0.7 percent).

Second, Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of annual fees for FY 1996 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. All other licensees and approval holders who held a license or approval on October 1, 1995, are subject to FY 1996 annual fees. This change is being made in recognition of the fact that since the final FY 1995 rule was published in June 1995, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1995 final rule became effective requesting further clarification and information concerning the annual fees 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, 1995. Similar situations existed after the FY

1991-1994 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.

Third, beginning in FY 1996, the NRC proposes to assess §171.16(d) annual fees, for those materials licenses whose annual fees are less than \$100,000, based on the anniversary of the date the license was originally issued. Accordingly, a new section would be added to §171.19. For example, if the original license was issued on June 17, then the anniversary date of that materials license, for annual fee purposes, would be June 1 and the licensee would be billed in June of each year for the annual fees in effect on the anniversary date (the first day of the month that the original license was issued) of the license. For FY 1996, those affected materials licenses with a license anniversary date between October 1, 1995, and the effective date of the final FY 1996 fee rule would be billed upon publication of the final rule in the Federal Register and annually thereafter during the anniversary month of the license. Those affected materials licenses whose license anniversary date is on or after the effective date of the final FY 1996 fee rule would be billed during the anniversary month of the license and annually thereafter based on the annual fee in effect at the time of billing. The specific license categories of materials licensees affected by this proposed change are listed in §171.19(d) of this

proposed rule.

Billing certain materials licensees on the anniversary date of the license would allow the NRC to make the billing process more efficient by distributing the billing and collection of annual fee invoices over the entire year. The current practice is to bill over 6,000 materials licenses simultaneously during the fiscal year. Section 171.19 would also be amended to credit quarterly partial annual fee payments for FY 1996 already made by certain licensees in FY 1996 either toward their total annual fee to be assessed, or to make refunds, if necessary. Materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 would receive a refund for those payments, as appropriate.

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 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.

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.

Part 170

Section 170.12 Payment of fees.

This section would be amended to conform to the streamlining changes being proposed by the NRC. Section 170.12(a), which describes application fees, would be amended to recognize that the NRC would not issue a new license or amendment prior to receipt of the prescribed fee. Section 170.12(d), which describes renewal fees, would be amended to recognize that materials "flat" renewal fees would be eliminated. Section 170.12(g), which discusses inspection fees, would be amended to recognize that materials "flat" inspection fees were eliminated in the FY 1995 final rule (60 FR 32218; June 20, 1995).

Section 170.20 Average cost per professional staff hour.

This section would be amended to establish two professional staff-hour rates based on FY 1996 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 1996 for all activities whose fees are based on full cost under \$170.21 would be \$128 per hour, or \$223,314 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 \$120 per hour, or \$209,057 per direct FTE. The rates are based on the FY 1996 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. 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, to be included in the hourly rates.

Table II

FY 1996 Budget Authority to be Included in Hourly Rates
(Dollars in millions)

<u>Salary and Benefits</u>	<u>Reactor Program</u>	<u>Materials Program</u>
Program	\$149.6	\$46.3
Allocated Agency Management & Support	<u>40.9</u>	<u>12.7</u>
Subtotal	\$190.5	\$59.0
<u>General and Administrative Support (G&A)</u>		
Program Travel and Other Support	11.7	3.2
Allocated Agency Management and Support	<u>69.5</u>	<u>21.5</u>
Subtotal	\$81.2	\$24.7
Less offsetting receipts	<u>.1</u>	<u>-----</u>
Total Budget Included in Hourly Rate	\$271.6	\$83.7
Program Direct FTEs	1,216.2	400.5
Rate per Direct FTE	\$223,314	\$209,057
Professional Hourly Rate	\$128	\$120

Dividing the \$271.6 million budget for the reactor program by the number of reactor program direct FTEs (1216.2) results in a rate for the reactor program of \$223,314 per FTE for FY 1996. Dividing the \$83.7 million budget for the nuclear materials and

nuclear waste program by the number of program direct FTEs (400.5) results in a rate of \$209,057 per FTE for FY 1996. The Direct FTE Hourly Rate for the reactor program is \$128 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$223,314) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$120 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$209,057) by the number of productive hours in one year (1744 hours). The method used to calculate the FY 1996 hourly rate is the same as the method used in the FY 1995 rule. The FY 1996 rate is slightly higher than the FY 1995 rate due in part to the increase in the Federal pay raise given to all Federal employees in January 1995.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1996 budgeted costs and to recover costs incurred by the NRC 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, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1996 hourly rate for the reactor program, as shown in §170.20. Although the average amounts of time needed to review import and export licensing applications have not changed, the fees in §170.21, facility Category K, have increased from FY 1995 as a result of the increase in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of §170.21 would be revised to provide that professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file that are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the 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, are assessed at the applicable 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, which are based on full-cost recovery, would be modified to recover the FY 1996 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in \$170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application ("flat" fees) would be adjusted to reflect the increase in the professional hourly rate from \$116 per hour in FY 1995 to \$120 per hour in FY 1996. The "flat" renewal fees for certain materials licenses in \$170.31 would be eliminated and combined with the materials annual fees in \$171.16(d).

The amounts of the licensing "flat" fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be 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.

Fee Category 15, covering the fees for export and import licenses, would be amended to include clarifying language that

export and import of materials includes the export and import of radioactive waste. The NRC amended 10 CFR Part 110 on July 21, 1995 (60 FR 37556), to require specific licenses for the export and import of radioactive waste. The final rule became effective August 21, 1995.

The proposed licensing "flat" fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule. Although the average amounts of time needed to review licensing applications have not changed, the "flat" fees in §170.31 have increased from FY 1995 as a result of the increase in the hourly rate.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$120, as shown in §170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section would be revised as described below. Paragraph (d) would be removed and reserved and paragraphs (a), (b), (c), and (e) would be revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1996.

Paragraph (b) would be revised in its entirety to establish the FY 1996 annual fee for operating power reactors and to change fiscal year references from FY 1995 to FY 1996. The fees would be established by reducing FY 1995 annual fees (prior to rounding) by 6.4 percent. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) and continue to be shown for convenience purposes. Paragraphs (c)(1) would be revised in its entirety and (c)(2) would be removed and reserved.

With respect to Big Rock Point, a smaller, older reactor, the NRC proposes to grant a partial exemption from the FY 1996 annual fees similar to FY 1995 based on a request filed with the NRC in accordance with §171.11.

Each operating power reactor, except Big Rock Point, would pay an annual fee of \$2,747,000 in FY 1996.

Paragraph (d) would be removed and reserved.

Paragraph (e) would be revised to show the amount of the FY 1996 annual fee for nonpower (test and research) reactors. In FY 1996, the fee is 6.4 percent below the FY 1995 level. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at §171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at §171.11(a)(2). The NRC amended §171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. 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.

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. 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 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 1996 annual fees for materials licensees, including Government agencies, licensed by the NRC. These fees were determined by reducing the FY 1995 annual fees (prior to rounding) by 6.4 percent.

For the first time, the NRC is proposing to combine the "flat" material renewal fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171. As described in the Federal Register on

September 8, 1995 (60 FR 46784), recent NRC internal reviews and regulatory impact surveys of material licensees have highlighted areas in which the current materials licensing process can be improved. The NRC has completed the preliminary phases of its Business Process Reengineering (BPR) initiative to redesign the process of licensing medical, academic, and industrial users of byproduct materials as well as with regard to some small scope users of source and special nuclear materials. The NRC has extended, by rulemaking, certain specific material licenses by five years from the current expiration dates of those licenses. Resources that would have otherwise been used to renew these licenses would be devoted to the BPR project. The NRC is also examining whether to permanently change the license duration for materials licenses. The NRC estimates that approximately 80 percent of its approximately 6,500 materials licenses would be extended by the final rulemaking. Consistent with this change in license renewals, the NRC is proposing, for fee purposes, to combine the materials "flat" renewal fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171.

This action also recognizes that the NRC's "regulatory service" provided to licensees, as referred to in OBRA-90, is comprised of the total regulatory activities that the NRC determines are needed to regulate a class of licensees. These regulatory activities include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses

to allegations, incident investigations, and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept of OBRA-90, the NRC believes that materials licensees' "flat" renewal fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the renewal fee, has, in effect, already been implemented for most materials licensees. First, materials licensees currently pay a "flat fee" per renewal based on the average cost of a renewal for their fee category, and second, the renewal term of five years is identical for most materials licensees. Thus, licensees in the same materials license fee category already pay essentially the same average annual cost for renewals. Further, the average cost will decrease to a relatively small amount as a result of the five-year extension and potential change in license duration. Therefore, combining renewal and annual fees results in essentially the same average cost per license over time. This approach would provide materials licensees with simpler and more predictable NRC fee charges as there would be no additional fees paid for periodic renewals. Because certain materials FY 1996 annual fees would include renewals, those materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will be issued a refund, as appropriate.

Beginning in FY 1996, the NRC is also proposing that annual

fees for most materials licenses be billed on the anniversary date of the license (licensees whose annual fees are \$100,000 or more would continue to be assessed quarterly). The annual fee assessed would be the fee in effect on the license anniversary date. The proposal would apply to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. Billing most materials licenses on the anniversary date of the license would allow the NRC to improve the efficiency of its billing process; under this proposal an average of approximately 500 annual fee invoices would be sent to materials licensees each month. The current practice of billing over 6,000 materials licensees simultaneously each fiscal year would be eliminated. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license would be June 1 and the licensee would be billed in June of each year for the annual fee in effect on June 1. The proposed change to the billing system would mean that during the transition period of FY 1996 affected materials licensees with an anniversary date falling between October 1, 1995, and the effective date of the FY 1996 fee rule would receive a bill payable on the effective date of the FY 1996 final rule. Affected materials licensees with license anniversary dates falling on or after the effective date

of the FY 1996 final rule would be billed during their anniversary month of their license. Under this proposal, some materials licensees would unavoidably receive two annual fee bills during the 12 month transition period. For example, a materials licensee who paid its FY 1996 annual fee bill in April 1996, the planned effective date of the FY 1996 fee rule, would receive a bill six months later in October 1996 (FY 1997) if October is the anniversary month of that materials license. In this example, the licensee would pay the same annual fee in FY 1997 (October) as he paid in FY 1996 (April). Materials licensees would continue to pay fees at the FY 1996 rate in FY 1997 until such time as the FY 1997 final fee rule becomes effective. Each bill would be for a different fiscal year, therefore, no double billing would occur.

The NRC believes that the efficiencies gained by billing certain materials annual fees throughout the year as well as having materials licensees know exactly when they will be billed each year for the annual fee outweigh the inconveniences that may be caused during the transition period. New licenses issued during FY 1996 would receive a prorated annual fee in accordance with the current proration provision of \$171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY would be assessed one-half the annual fee for FY 1996. New materials licenses issued on or after April 1, 1996, will not be assessed an annual fee for FY 1996.

Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning with the effective date of the FY 1996 final rule, affected licensees would be billed and would pay the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

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 amount or range of the FY 1996 annual fees for all materials licensees is summarized as follows:

Materials Licenses
Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel facility	\$2,404,000
Part 70 - Low enriched fuel facility	\$1,180,000
Part 40 - UF ₆ conversion facility	\$598,100
Part 40 - Uranium recovery facilities	\$20,600 to \$57,000

Part 30 - Byproduct \$450 to \$71,700 ^{1/}
Material Licenses

Part 71 - Transporta- \$950 to \$72,800
tion of Radioactive
Material

Part 72 - Independent \$261,100
Storage of Spent Nuclear
Fuel

^{1/} Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$388,600.

Section 171.16(e) would be revised in its entirety to indicate the activities that were a part of the additional charge (surcharge) included in the FY 1995 annual fees. These activities are listed and would continue to be shown for convenience.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. All other licensees and approval holders who held a license or approval on October 1, 1995, are subject to the FY 1996 annual fees.

Section 171.19 Payment.

Paragraph (b) would be revised to give credit for partial payments made by certain licensees in FY 1996 toward their FY 1996 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1996 will have been made by operating power reactor licensees and some large materials licensees before the final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid renewal fees for renewal applications that were filed in FY 1996, whereas this proposed rule includes the renewals in the annual fee. The NRC will refund these renewal fee payments, as appropriate. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) would be revised to update fiscal year references and to delete the references concerning payment requirements for those licensees whose annual fees are less than \$100,000.

A new paragraph (d) would be added to cover those licensees whose fees are less than \$100,000 and who would be billed on the anniversary date of their license beginning in FY 1996.

During the past five years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that 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).

The NRC reinstated the exemption from 10 CFR Part 171 annual fees for nonprofit educational institutions on April 18, 1994 (59 FR 12539; March 17, 1994). In that final rule, the NRC indicated

that although nonprofit research institutions were not exempt from annual fees, such institutions were free to file an exemption request based on the "public good" concept if they felt they could qualify. Several nonprofit research institutions have since filed and been granted an exemption from the annual fees on that basis. In addition, some Federal agencies who hold materials licenses have filed for exemption from annual fees based on the public good concept as well. The requests from Federal agencies to receive public good exemptions have been denied by the NRC. The NRC did not intend to extend public good exemptions to Federal agencies. Therefore, the NRC does not intend to grant public good exemptions to Federal agencies.

IV. Electronic Access

Comments on the proposed rule may be submitted through the Internet by addressing electronic mail to `INTERNET:SECY@NRC.GOV`. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on `FEDWORLD`.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. This proposed rulemaking is available for review

and comment on the BBS. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via the Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, and dialing the toll free number 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703-321-3339, or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mail." At that point, a menu will be displayed that has the option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc"

at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the "Rules Menu." Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files and does not display the NRC "Rules Menu."

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-415-5780; e-mail AXD3@nrc.gov.

V. 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. (A discussion of environmental justice can be found in Executive Order No. 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.)

VI. 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.).

VII. 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 to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held that--

- (1) The C had the authority to recover the full cost of

providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this

statutory requirement, the NRC, in accordance with §171.13, is publishing the proposed amount of the FY 1996 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1996 budget of \$473.3 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(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).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in Skinner v. Mid-American Pipeline Co., 109 S. Ct. 1726 (1989), and the denial of certiorari in Florida Power and Light, all of the lawsuits were withdrawn.

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).

VIII. 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 1996. The proposed rule results in a decrease in the annual fees charged to all 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.

IX. Backfit Analysis

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.

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.

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, 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. In Section 170.12, paragraph (d)(1) is removed and reserved and paragraphs (a) and (g) are revised to read as follows:

§170.12 Payment of fees.

(a) Application fees. Each application for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. The NRC will not issue a new license or

amendment prior to the receipt of the prescribed fee. All application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

* * * * *

(d) * * *

(1) [Reserved].

* * * * *

(g) Inspection fees. Fees for all inspections subject to full cost recovery will be assessed on a per inspection basis for completed inspections and are payable, on a quarterly basis, upon notification by the Commission. Inspection costs include preparation time, time on site, and documentation time and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

* * * * *

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 the following applicable professional staff-hour rates:

Reactor Program	\$128 per hour
(\$170.21 Activities)	

Nuclear Materials and	
Nuclear Waste Program	\$120 per hour
(\$170.31 Activities)	

4. In §170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are 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	Fees ^{1/ 2/}
--------------------------------------	-----------------------

* * * * *

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the 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 exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).

Application-new license	\$7,800
Amendment	\$7,800

2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).

Application-new license \$4,800
Amendment \$4,800

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

Application-new license \$3,000
Amendment \$3,000

4. Application for export of facility components and equipment not requiring Commissioner review, 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.

2/ Fees will not be charged for orders issued by the Commission pursuant to §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§50.12, 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. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

2/ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For 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 the final rule will be determined at the professional rates in effect at the time the service was provided. 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 any 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 applicable 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.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

<u>Category of materials licenses and type of fees^{1/}</u>	<u>Fee^{2/}, ^{3/}</u>
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1. Special nuclear material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing

possession only:

License. Renewal, Amendment	Full Cost
Inspections	Full Cost

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:²

Application - New license	\$550
Amendment	\$300

- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which

the licensee shall pay the same fees as those
for Category 1A:4'

Application - New license	\$600
Amendment	\$290

E. Licenses for construction and operation of
a uranium enrichment facility.

Application	\$125,000
License, Renewal, Amendment	Full Cost
Inspections	Full Cost

2. Source material:

A.(1) Licenses for possession and use of source
material in recovery operations such as
milling, in-situ leaching, heap-leaching,
refining uranium mill concentrates to
uranium hexafluoride, ore buying stations,
ion exchange facilities and in processing
of ores containing source material for
extraction of metals other than uranium or
thorium, including licenses authorizing the
possession of byproduct waste material
(tailings) from source material recovery

operations, as well as licenses authorizing
the possession and maintenance of a facility
in a standby mode:

License, Renewal, Amendment Full Cost
Inspections Full Cost

- (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).

License, renewal, amendment Full Cost
Inspections Full Cost

- (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).

License, renewal, amendment Full Cost
Inspections Full Cost

- B. Licenses which authorize the possession, use and/or installation of source material for shielding:

Application - New license	\$160
Amendment	\$240

- C. All other source material licenses:

Application - New license	\$2,800
Amendment	\$420

3. Byproduct material:

- A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	\$3,000
Amendment	\$550

- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	\$1,200
Amendment	\$580

- C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New license	\$4,100
Amendment	\$520

- 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:

Application - New license	\$1,500
Amendment	\$430

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New license \$1,200
Amendment \$360

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license \$1,500
Amendment \$370

- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license \$6,000
Amendment \$780

- H. Licenses issued pursuant to Subpart A of Part 32 of

this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	\$2,400
Amendment	\$1,000

- I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	\$4,400
Amendment	\$860

- J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct

material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,600
Amendment	\$290

- K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,300
Amendment	\$310

- L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do

not authorize commercial distribution:

Application - New license	\$4,300
Amendment	\$660

- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application - New license	\$1,500
Amendment	\$610

- N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application - New license	\$1,900
Amendment	\$590

- O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:

Application - New license	\$3,900
Amendment	\$720

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application - New license	\$550
Amendment	\$300

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 authorized to receive or dispose of waste material:

License, renewal, amendment . . . Full Cost

Inspections Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license \$3,400

Amendment \$410

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license \$1,700

Amendment \$290

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application - New license \$3,200
Amendment \$640

- B. Licenses for possession and use of byproduct material for field flooding tracer studies:

License, renewal, amendment . . . Full Cost

6. Nuclear laundries:

- A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application - New license \$5,100
Amendment \$790

7. Human use of byproduct, source, or special nuclear material:

- A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material,

source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license \$2,800

Amendment \$470

- B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license \$3,000

Amendment \$530

- C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license \$1,400

Amendment \$410

8. Civil defense:

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application - New license	\$760
Amendment	\$350

9. Device, product, or sealed source safety evaluation:

- A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

Application - each device	\$3,400
Amendment - each device	\$1,200

- B. 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:

Application - each device	\$1,700
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Amendment - each device \$600

- C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application - each source \$720

Amendment - each source \$240

- D. Safety evaluation of sealed sources 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:

Application - each source \$360

Amendment - each source \$120

10. Transportation of radioactive material:

- A. Evaluation of casks, packages, and shipping containers:

Approval, Renewal, Amendment . . . Full Cost

Inspections Full Cost

B. Evaluation of 10 CFR Part 71 quality assurance programs:

Application - Approval	\$340
Amendment	\$250
Inspections	Full Cost

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment . .	Full Cost
Inspections	Full Cost

12. Special projects:^{2/}

Approvals and preapplication/ licensing activities	Full Cost
Inspections	Full Cost

13. A. Spent fuel storage cask Certificate of Compliance:

Approvals	Full Cost
Amendments, revisions, and supplements	Full Cost
Reapproval	Full Cost

B. Inspections related to spent fuel storage cask

Certificate of Compliance Full Cost

C. Inspections related to storage of spent fuel under
§72.210 of this chapter Full Cost

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 of this chapter:

Approval, Renewal, Amendment . . Full Cost

Inspections Full Cost

15. Import and Export licenses:

Licenses issued pursuant to 10 CFR Part 110 of this chapter
for the import and export only of special nuclear material,
source material, tritium and other byproduct material, heavy
water, or nuclear grade graphite.

A. Application for export or import of HEU and other
materials, including radioactive waste, which must be
reviewed by the Commissioners and the Executive Branch,
for example, those actions under 10 CFR 110.40(b).
This category includes application for export or import
of radioactive wastes in multiple forms from multiple

generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.

Application-new license	\$7,800
Amendment	\$7,800

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

Application-new license	\$4,800
Amendment	\$4,800

- C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

Application-new license	\$3,000
Amendment	\$3,000

- D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

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

- E. 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, review, or consultations with other agencies or foreign governments.

Amendment	\$120
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16. Reciprocity:

Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of	
Form 241)	\$1,100
Revisions	\$200

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 certain renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) Application fees. Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, 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 the prescribed application fee of \$125,000.

(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 category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and

nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under \$170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with \$170.12(g).

^{2/} Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under 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 the final rule will be determined at the professional rates in effect at the time the service was provided. For 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 applicable rate established in \$170.20. The minimum total review cost is twice the hourly rate shown in \$170.20.

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 that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application

fee for fee Category 1C only.

2/ Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety 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.

6. 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).

7. In §171.15, paragraph (d) is removed and reserved and paragraphs (a), (b), (c), and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in §171.11(a)(1) and (a)(2).

(b) The FY 1996 uniform annual fee for each operating power reactor which must be collected by September 30, 1996, is \$2,747,000. This fee has been determined by adjusting the FY 1995 annual fee downward by approximately 6 percent. The FY 1995

annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under 10 CFR Part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center.

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

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities; and

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(d) [Reserved].

(e) The FY 1996 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under §171.11(a), are as follows:

Research reactor	\$52,900
Test reactor	\$52,900

* * * * *

8. In §171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§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.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1996 as follows:

<u>Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$350,000 to \$5 million	\$1,800
Less than \$350,000	\$400
<u>Manufacturing entities that have an average of 500 employees or less</u>	
35 to 500 employees	\$1,800
Less than 35 employees	\$400
<u>Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)</u>	
20,000 to 50,000	\$1,800
Less than 20,000	\$400
<u>Educational Institutions that are not State or Publicly</u>	

Supported, and have 500 Employees
or Less.

35 to 500 employees	\$1,800
Less than 35 employees	\$400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1996, the maximum annual fee a small entity is required to pay is \$1,800 for each category applicable to the license(s).

(d) The FY 1996 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1996 annual fees, which must be collected by September 30, 1996, have been determined by adjusting downward the FY 1995 annual fees by approximately 6 percent. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

----- (See footnotes at end of table) -----

Category of materials licenses

Annual Fees^{1, 2, 3}

1. Special nuclear material:

A. (1) Licenses for possession and use
of U-235 or plutonium for fuel
fabrication activities.

(a) Strategic Special Nuclear Material:

Babcock & Wilcox	SNM-42	\$2,404,000
Nuclear Fuel Services	SNM-124	\$2,404,000

(b) Low Enriched Uranium in Dispersable Form Used for
Fabrication of Power Reactor Fuel:

Combustion Engineering (Hematite)	SNM-33	\$1,180,000
General Electric Company	SNM-1097	\$1,180,000
Siemens Nuclear Power	SNM-1227	\$1,180,000
Westinghouse Electric Company	SNM-1107	\$1,180,000

(2) All other special nuclear materials licenses not

included in Category 1.A.(1) which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

B&W Fuel Company	SNM-1168	\$469,400
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(b) All Others:

General Electric	SNM-960	\$318,800
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B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). 61,100

C. Licenses for possession and use special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. \$1,200

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which

the licensee shall pay the same fees
as those for Category 1.A.(2). \$2,800

E. Licenses for the operation of a
uranium enrichment facility. \$ N/A^{11/}

2. Source material:

A.(1) Licenses for possession and use of
source material for refining uranium
mill concentrates to uranium
hexafluoride. \$598,100

(2) Licenses for possession and use of
source material in recovery operations
such as milling, in-situ leaching,
heap-leaching, ore buying stations,
ion exchange facilities and in processing
of ores containing source material for
extraction of metals other than uranium
or thorium, including licenses authorizing
the possession of byproduct waste material
(tailings) from source material recovery
operations, as well as licenses authorizing
the possession and maintenance of a facility
in a standby mode.

Class I facilities' \$57,000

Class II facilities' \$32,200

Other facilities' \$20,600

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4). \$41,800

(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2). \$7,400

B. Licenses which authorize only the possession, use and/or installation of source material for shielding. \$450

C. All other source material licenses. \$8,100

3. Byproduct material:

- A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$15,400
- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$5,200
- C. Licenses issued pursuant to §§32.72 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this

chapter when included on the same
license.

\$10,400

- 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 also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license.

\$4,100

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).

\$2,900

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed

for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$3,500

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$18,200

H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this

chapter.

\$4,600

- I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. \$8,200
- J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. \$3,500

- K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. \$3,000
- L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. \$11,400
- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution. \$5,100

N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C. \$5,600

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license. \$13,000

P. All other specific byproduct material licenses, except those in Categories 4A through 9D. \$1,600

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 authorized to receive or dispose of waste material. \$94,400^{3/4}
- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to

receive or dispose of the material. \$13,300

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. \$7,100

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. \$7,500
- B. Licenses for possession and use of byproduct material for field flooding tracer studies. \$12,200

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. \$13,600

7. Human use of byproduct, source, or special nuclear material.

A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. \$9,500

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special

nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.^{2/} \$21,700

- C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.^{2/} \$4,300

8. Civil defense:

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. \$1,600

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. \$6,700
- 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. \$3,400
- C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. \$1,400
- D. Registrations issued for the safety

evaluation of sealed sources
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. \$720

10. Transportation of radioactive material:

- A. Certificates of Compliance or other
package approvals issued for design of
casks, packages, and shipping containers.

Spent Fuel, High-Level Waste, and plutonium air packages	N/A [§]
Other Casks	N/A [§]

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

Users and Fabricators	\$72,800
Users	\$950

11. Standardized spent fuel facilities. N/A[§]

12. Special Projects N/A^{5/}
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. \$261,100
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^{2/}
15. Import and Export licenses N/A^{3/}
16. Reciprocity N/A^{3/}
17. Master materials licenses of broad scope issued to Government agencies. \$388,600
18. Department of Energy:
 - A. Certificates of Compliance \$1,078,000^{10/}
 - B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities \$1,813,000

1/ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

2/ Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72

of this chapter.

^{3/} For FYs 1997 and 1998, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

^{4/} A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

^{5/} Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

^{6/} Standardized spent fuel facilities, Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

^{7/} Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while

they are licensed to operate.

8/ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

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.

11/ No annual fee has been established because there are currently no licensee; in this particular fee category.

(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 under 10 CFR Part 170 licensing and inspection fees 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.

* * * * *

9. In §171.19, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§171.19 Payment.

* * * * *

(b) For FY 1996 through FY 1998, 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. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will refund any "flat" materials renewal fees payments received for renewal applications filed in FY 1996, as appropriate. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon

publication of the final rule or on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

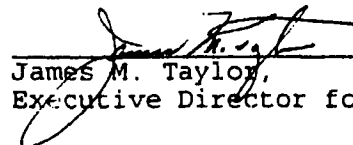
(c) For FYs 1996 through 1998, annual fees in the amount of \$100,000 or more and described in the Federal Register notice pursuant to §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FYs 1996 through 1998, annual fees of less than \$100,000 must be paid as billed by the NRC. Beginning in FY 1996, materials license annual fees that are less than \$100,000 will be billed on the anniversary of the license. The materials licensees that would be billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. During the transition year of FY 1996, licensees with license anniversary dates falling between October 1 and the effective date of the FY 1996 final rule would receive an annual fee bill payable on the effective date of the final rule, and licensees with license anniversary dates that fall on or after the effective date of the

final rule would be billed on the anniversary of their license. Starting with the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date would be assessed the annual fee in effect on the anniversary date of the license.

Dated at Rockville, Maryland, this 19th day of January,
1996.

For the Nuclear Regulatory Commission.



James M. Taylor,
Executive Director for Operations.

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 (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 fee rule and proposes to continue their use in this FY 1996 proposed rule. The small entity fee categories in §171.16(c) of this proposed 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 the proposal to continue these actions would reduce the impact of annual fees on small businesses in FY 1996. 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; for FY 1995 about \$503.6 million and the amount to be collected in FY 1996 is approximately \$462.3 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) and in FY 1995 (60 FR 32218; June 20, 1995) 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 1991-1995.

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 receipts as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is proposing that the FY 1996 annual fees for all licensees be established at 6.4 percent below the FY 1995 annual fees. The NRC believes that the proposed 6.4 percent downward adjustment to the FY 1995 annual fees is not a substantial enough change to warrant establishing a new baseline for FY 1996. Therefore, the NRC is proposing to establish the FY 1996 annual fees for all licensees at a level of about 6 percent below the FY 1995 fees.

The NRC is also proposing to continue the streamlining of the fee structure and process for materials licenses which began in FY 1995. Two changes are being proposed in this area.

First, the NRC is proposing to assess annual fees for certain materials licenses on the anniversary date of the license. Billing certain materials licenses on the anniversary date of the license would allow NRC to make improved efficiencies in the billing process whereby approximately 500 annual fee invoices would be sent to materials licensees each month. The current practice of billing over 6,000 materials licensees at the same time in the fiscal year would be eliminated. The NRC believes that the efficiencies gained by billing certain materials annual fees on a monthly basis as well as materials licensees knowing exactly when they will be billed each year for the annual fee outweigh the inconveniences that may be caused during the FY 1996 transition period.

Second, the NRC is proposing to further streamline the materials fee program and improve the predictability of fees by eliminating the materials "flat" renewal fees in \$170.31. This proposed action is consistent with the NRC's recent Business Process Reengineering initiative to extend the duration of certain materials licenses. The NRC published a proposed rule in the Federal Register on September 8, 1995, explaining this initiative (60 FR 46784). In the proposed rule, certain

materials licenses would be extended for five years beyond their expiration date. Additionally, comments were requested on the general topic of the appropriate duration of licenses. A final rule was published in the Federal Register on January 16, 1996 (61 FR 1109).

II. Impact on small entities.

The comments received on the proposed FY 1991-1995 fee rule revisions and the small entity certifications received in response to the final FY 1991-1995 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 1991-1994 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 five years, approximately 2,900 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) and in the FY 1995 rule (60 FR 32218; June 20, 1995). 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 1991-1995 evaluations 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 1996, 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 1996, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a

significant impact on small entities. In issuing this proposed rule for FY 1996, the NRC concludes that the 10 CFR Part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR Part 171 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 1996 costs 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 1996, 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 1992-1995, 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 now includes manufacturing companies with a relatively small number of employees.

III. Summary.

The NRC has determined the 10 CFR Part 171 annual fees 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 for-profit 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. Therefore, the analysis and conclusions established in the FY 1991-1995 rules remain valid for this proposed rule for FY 1996.

**CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST**

This check list is to be submitted with each document (or group of Qs/As) sent for processing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) 14, 16 Rep. Schaefer
2. TYPE OF DOCUMENT ☒ CORRESPONDENCE ☐ HEARINGS (Qs/As)
3. DOCUMENT CONTROL ☐ SENSITIVE (NRC ONLY) ☒ NON-SENSITIVE
4. CONGRESSIONAL COMMITTEE AND SUBCOMMITTEE (if applicable)

Congressional Committee

Subcommittee
5. SUBJECT CODES
(A) _____
(B) _____
(C) _____
6. SOURCE OF DOCUMENTS
(A) _____ 5520 (DOCUMENT NAME _____)
(B) _____ SCAN (C) _____ ATTACHMENTS
(D) _____ OTHER _____
7. SYSTEM LOG DATES
(A) 2/13/91 DATA OCA SENT DOCUMENT TO CCS
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COMMENTS:

RELEASE TO PDR

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

April 10, 1996

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for each Fiscal Year 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The final amendments to 10 CFR Part 170 will revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, will establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees will decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication. The final rule will become effective 60 days after publication.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Senator Bob Graham

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PDR PR
170 61FR2948 PDR

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11/17



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

April 10, 1996

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for each Fiscal Year 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The final amendments to 10 CFR Part 170 will revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, will establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees will decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication. The final rule will become effective 60 days after publication.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over a horizontal line.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Representative Frank Pallone



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

April 10, 1996

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for each Fiscal Year 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The final amendments to 10 CFR Part 170 will revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, will establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees will decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

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Sincerely,

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Senator J. James Exon



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

April 10, 1996

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

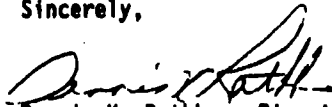
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Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication. The final rule will become effective 60 days after publication.

Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Representative Martin Olav Sabo



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 10, 1996

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for each Fiscal Year 1991 through 1998 by assessing license and annual fees. For FY 1996, the NRC must collect approximately \$462.3 million through these fees. This is \$41.3 million less than the amount to be recovered for FY 1995 and \$50.7 million less than the FY 1994 amount. The budget reduction results in reduced annual fees for NRC licensees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The final amendments to 10 CFR Part 170 will revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

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Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Senator J. Bennett Johnston



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

April 10, 1996

The Honorable John T. Myers, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

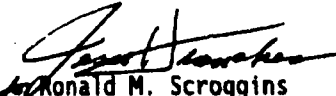
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In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The final amendments to 10 CFR Part 170 will revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The final amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, will establish the amount of the FY 1996 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1996 annual fees will decrease by about 6 percent as compared to FY 1995. The reduction in the annual fees results from changes in (1) the budget to be recovered from fees; (2) the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts; and (3) the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the final rule which is being transmitted to the Federal Register for publication. The final rule will become effective 60 days after publication.

Sincerely,


Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure: Final Revision to
10 CFR Parts 170 and 171

cc: Representative Tom Bevil

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF39

Revision of Fee Schedules; 100% Fee Recovery, FY 1996

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The 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) 1996 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1996 is approximately \$462.3 million.

EFFECTIVE DATE: (60 days after publication in the Federal Register).

ADDRESSES: Copies of comments received and the agency workpapers that support these final 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: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

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

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted 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 fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

On June 20, 1995 (60 FR 32218), the NRC published its final rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund. The NRC stated in the FY 1995 final rule that in an effort to stabilize annual fees, beginning in FY 1996, the NRC would adjust the annual fees 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 stated that the percentage change would be adjusted based on changes in

the 10 CFR Part 170 fees and other receipts as well as on the number of licensees paying fees.

On January 30, 1996 (61 FR 2948), the NRC published a proposed rule to establish the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1996, less the appropriation received from the Nuclear Waste Fund. Several changes were proposed by the NRC to the fees to be assessed for FY 1996. These changes were highlighted in the proposed rule (61 FR 2948; January 30, 1996). The major changes are summarized as follows:

1. Stabilize 10 CFR Part 171 annual fees by adjusting all annual fees downward by about 6 percent. This change is consistent with the NRC's intention, stated in the FY 1995 final rule, that annual fees would be stabilized, beginning in FY 1996, by adjusting the FY 1995 annual fees by the percent change (plus or minus) in the NRC budget authority taking into consideration the estimated collections from 10 CFR Part 170 fees and the number of licensees paying fees;

2. Assess 10 CFR Part 171 annual fees of less than \$100,000 to materials licensees on the anniversary date of the license. This change continues the streamlining of fees and allows the NRC to make the billing process more efficient by

distributing the billing and collection of annual fees over the entire year. The current practice is to bill over 6,000 materials licensees at the same time during the fiscal year;

3. Eliminate the materials "flat" renewal fees in 10 CFR 170.31 and include the costs of the renewals in the annual fees in 10 CFR 171.16(d) for the affected licensees. This change continues the simplification of fees initiated in FY 1995 and is consistent with NRC's recent Business Process Reengineering initiatives to extend the duration of certain materials licenses (61 FR 1109; January 16, 1996);

4. Revise the two professional hourly rates in 10 CFR 170.20 which are used to determine the Part 170 fees assessed by the NRC. The rate for FY 1996 for the reactor program is \$128 per hour and the rate for the materials program is \$120 per hour; and

5. Adjust the 10 CFR 170.21 and 170.31 licensing (application and amendment) "flat" fees for materials licenses to reflect the costs of providing the licensing services.

II. Responses to Comments

The NRC received eight comments on the proposed rule. Although the comment period ended on February 29, 1996, the NRC

has reviewed and evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Comments regarding the major changes proposed in the FY 1996 fee rule.

1. Streamline and stabilize annual fees.

Comment. All commenters responding to this proposed change were encouraged by and supported the positive steps taken by NRC to equitably distribute and to reduce the burden of user fees on licensees. Several commenters indicated that this change represents a greater simplification and streamlining of the fee setting procedures and has eliminated the dramatic swings in NRC fees seen in the past. Commenters stated that the approximate 6 percent reduction in annual fees for all licensees is evidence of this. Other commenters stated that the NRC should continue the process of streamlining and commensurate fee reduction because it is a responsible approach in light of today's highly competitive global nuclear marketplace.

Response. Consistent with the comments, the final rule adopts the methodology to streamline and stabilize FY 1996 annual fees by adjusting these fees by the percentage change (plus or minus) in NRC's total budget authority. The FY 1995 annual fees have been used as base annual fees and these annual fees have been adjusted downward for FY 1996 based on the percentage change in the NRC's budget authority, taking into consideration the total number of licensees paying fees and estimated collections from 10 CFR Part 170 licensing and inspection fees. Therefore for FY 1996, all annual fees have been adjusted 6.5 percent below the FY 1995 levels.

2. Assess annual fees of less than \$100,000 to materials licenses on the anniversary date of license.

Comment. Commenters supported the NRC's proposal to invoice materials annual fees of less than \$100,000 on the anniversary date of the license. Commenters stated that, while helping to assist NRC in its billing efforts, it will also provide some relief to entities who have several licenses. The proposed system will allow these licensees to distribute their cash outlays over a longer period of time easing the financial stresses caused by a single payment period.

Response. Consistent with the comments, the NRC in this final rule will assess \$171.16(d) annual fees for those materials

licenses whose annual fees are less than \$100,000 based on the anniversary of the date the license was originally issued. Accordingly, a new paragraph is added to §171.19. For FY 1996, those affected materials licenses with a license anniversary date between October 1, 1995, and the effective date of this final FY 1996 fee rule will be billed upon publication of the final rule in the Federal Register and annually thereafter during the anniversary month of the license. Those affected materials licenses whose license anniversary date is on or after the effective date of this final FY 1996 fee rule will be billed during the anniversary month of the license and annually thereafter based on the annual fee in effect at the time of billing. The specific license categories of materials licensees affected by this change are listed in §171.19(d) of this final rule.

3. Revise the two professional rates in 10 CFR 170.20 based on the FY 1996 budget and adjust the 10 CFR 170.21 and 170.31 licensing (application and amendment) "flat" fees for licenses to reflect the costs of providing the licensing services.

Comment. Commenters supported the revised method of calculating two hourly rates adopted by NRC in FY 1995 to separately, and more equitably, allocate costs associated with the reactor program and the materials program. Commenters stated that the two rates, based on cost center concepts that identify

and allocate budgeted resources, is inherently fairer and more equitable to licensees and is more consistent with Congressional intent to identify and properly assess fees to those entities that utilize NRC resources and regulatory services. However, some commenters indicated that, while they are pleased that the materials rate increase is under 4 percent (\$116 per hour to \$120 per hour) and generally in keeping with inflation, the rate itself is unjustifiably high. These commenters stated that the \$120 hourly rate equals or exceeds the hourly rate of senior consultants or principals at major (national) consulting companies and that it exceeds the accepted rate for similar work in private industry. Some commenters pointed out the increase in the hourly rates exceeds the general increase that was provided to all Federal government workers on January 1, 1996, and they encourage the NRC to control its costs by seeking efficiencies in order to attain a downward trend of licensing and inspection fees comparable to that being realized in the annual fees. Other commenters indicated that the average cost per staff hour assumes a lower number of work hours relative to that commonly applied in industry and a multiplier which would appear to significantly exceed those commonly enjoyed by private industry. Some commenters stated that although summary calculations are presented in the proposed revisions, insufficient detail is provided to determine the justification for an increase in the hourly fees, i.e., the NRC has not listed the assumptions used in forecasting the predicted FTEs (full time equivalents) considered

necessary for the materials program.

Response. Consistent with the comments, the NRC has established in this final rule two professional hourly rates for FY 1996 which will be used to determine the 10 CFR Part 170 fees. A rate of \$128 per hour is established in §170.20 for the reactor program and a second rate of \$120 per hour is established in §170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the "cost center" concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA-90. The rates reflect the NRC budgeted cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of \$128 and \$120 are discussed in detail in Part III, Section-by-Section Analysis, relating to §170.20 of the proposed rule (61 FR 2951; January 30, 1996) and the same section of this final rule. For example, Table II shows the budgeted costs and the direct FTEs that must be recovered through fees assessed for

the hours expended by the direct FTEs. The budgeted costs as well as the direct resources are those required by the NRC to implement its statutory responsibilities and effectively accomplish the mission of the agency. Additional information on the hourly rates is provided in the NRC workpapers located in the Public Document Room. The specific details regarding the budget for FY 1996 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1996-1997" (NUREG-1100, Volume 11), which is available to the public. Copies of NUREG-1100, Volume 11, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555-0001.

B. Other comments.

1. Public interest exemptions.

Comment. Commenters supported NRC's decision to continue to charge annual fees to Federal agencies and to deny their requests for exemption based on "public good" claims.

Response. Consistent with the proposed rule and the

comments received, the NRC does not intend to grant public good exemptions to Federal agencies.

2. Fee legislation.

Comment. Several commenters noted that the NRC had completed its report on fee policy as required by the Energy Policy Act of 1992 and that the NRC had sent a report to Congress with legislative recommendations. The commenters commended NRC's efforts in this regard and stated that they continue to believe that 100 percent fee recovery for NRC, as mandated by OBRA-90, is inequitable and unfair to licensees because licensees are paying for certain costs that are not directly related to and do not benefit them. The commenters acknowledged that without legislative changes to OBRA-90, the central problems with NRC's fees cannot be completely resolved. Commenters strongly supported more efforts to define a more equitable fee base and recommended that the NRC continue to work with Congress and the Administration to obtain the necessary legislative changes. In this regard, commenters stated that it is time for NRC to actively pursue a legislative agenda with Congress by drafting specific language to modify OBRA-90 or the Atomic Energy Act.

Response. The need for legislation is beyond the scope of this rulemaking proceeding. As indicated in the FY 1995 final rule (60 FR 32218; June 20, 1995), the NRC will continue to work

with the Congress to make fees more fair and equitable.

3. Reexamine the issue of fees.

Comment. Some commenters stated that both Congress and the NRC should reexamine the whole issue of fees in the context of the substantial concerns of licensees regarding the trend of more states entering into the Agreement State program. These commenters refer to the stated intentions of Pennsylvania, Ohio, Massachusetts, and Oklahoma to become Agreement States. The commenters indicated that the NRC would then lose about 30 percent of the existing license base and fees would significantly increase unless other budgeting methods are approved or the number of FTEs is reduced in proportion to the reduction in the number of licenses.

Commenters from the uranium recovery industry also indicated that, as the uranium recovery industry continues to shrink in size, the decreasing number of licensees will ultimately be charged increasing annual fees thereby forcing more financial hardships on an already depressed industry. Commenters state that the current system gives preferential treatment to licensees in Agreement States. One commenter suggested that the NRC should enter into reimbursable agreements with the Agreement States before FY 1997, as stated in the FY 1995 final rule. In addition, one commenter believes that NRC should assess the

Environmental Protection Agency (EPA) for NRC work such as review of regulations promulgated by EPA relating to radionuclide emission standards.

Response. In FY 1995, the NRC changed the methodology for allocating those budgeted costs (about 10 percent of the NRC budget authority) that cause fairness and equity concerns because the legislation requested by the NRC had not been passed by the Congress (60 FR 32218; June 20, 1995). These costs, which include the cost of the Agreement State oversight and regulatory support to the Agreement States, are now treated in a manner similar to overhead. These costs are distributed based on the percentage of the budget directly attributable to a class of licensees. Commenters at that time supported this method of allocation as being more equitable, pending legislative relief by Congress to remedy this inequitable situation. If additional states become Agreement States and the NRC decides to rebaseline the fees based on substantive changes to the budget, then any increased cost for Agreement State oversight and regulatory support to the Agreement States would be identified, treated similar to overhead, and distributed based on the percentage of the budget directly attributable to a class of licensees.

The NRC also revised its methodologies in the FY 1995 final rule for determining annual fees for fuel facility and uranium recovery licensees. The revised methodologies resulted in annual

fees that more accurately reflect the costs of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. The revised methodologies were fully explained in Section IV, Section-by-Section Analysis, of the final FY 1995 rule (60 FR 32218; June 20, 1995).

In response to comments relative to annual fee increases as a result of the decrease in the number of licensees, the changes adopted in the FY 1995 final rule to stabilize fees should minimize large fee changes as a result of decreases in licensees. This is substantiated by this final FY 1996 rule which reduces all annual fees by the percent change to the FY 1995 levels.

The NRC indicated in the FY 1995 proposed rule (60 FR 14672; March 20, 1995) that it planned to increase the use of reimbursable agreements with Agreement States and Federal agencies beginning in FY 1997. To this end, the NRC has begun this process for Federal agencies. For example, in FY 1995 the NRC entered into reimbursable agreements with the National Aeronautics and Space Administration (NASA) for the Cassini mission and the Department of Energy (DOE) for plutonium disposition. Reimbursable agreements with Agreement States, however, continue to generate strong responses, both positive and negative, on the part of licensees and Agreement States.

With respect to the interaction between the NRC and EPA on

the promulgation of regulations, NRC interactions with EPA are an integral part of NRC's responsibilities under the Atomic Energy Act. Therefore, NRC must include the costs of this work in its budget and cannot perform such work under reimbursable agreements. In addition, the Independent Offices Appropriation Act of 1952, as amended, precludes the NRC from charging fees to Federal agencies for specific services rendered. While the NRC can assess annual fees to Federal agencies holding NRC licenses, the EPA is not considered a licensee of the NRC with respect to regulations promulgated by EPA relating to radionuclide emission standards.

4. Fees based on other factors.

Comment. One commenter indicated that NRC fees should take into consideration the competitive condition of certain markets and the effect of fees on domestic and foreign competition. For example, the commenter suggested that the NRC assess a small fee, such as \$5.00 per pound, on imported uranium to help offset the NRC budget and that OBRA-90 be amended to include this provision. In addition, the commenter suggested that a fee be added to foreign Separative Work Units (SWUs) used by U.S. utilities to enrich uranium. The commenter indicated that these fees, if levied, would not only solve part of the NRC's financing problems, but would also "rejuvenate the domestic uranium mining, milling, and enrichment businesses." Another commenter believes

that NRC should give full consideration to the effects of imposing significant annual fees on the domestic uranium recovery industry particularly in light of the Secretary of Energy's determination that the industry is non-viable and the requirement of the Atomic Energy Act that the country maintain a viable domestic source material industry to sustain vital national interests.

Response. OBRA-90 requires that the fees assessed to licensees have a reasonable relationship, to the maximum extent practicable, to the cost of providing the service. The IOAA requires that licensing fees be based on the cost of the services rendered. Consistent with these requirements, the NRC assesses licensing fees for import licenses. Basing fees on market competitive positions or assessing a \$5.00 per pound surcharge on imported uranium would not be consistent with these statutes. The issue of adverse economic impact of fees on NRC licensees was addressed in the FY 1991 final rule published July 10, 1991 (56 FR 31476). The NRC indicated that there will be adverse impacts from implementing the legislation and to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. The issues of basing fees on market competitive positions, the amount of material possessed, the frequency of use of the material, and the size of the facilities, were also addressed by the NRC in previous rules and in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991

(56 FR 31511-31513). The NRC did not adopt that approach because it would require licensees to submit large amounts of new data and would require additional NRC staff to evaluate the data submitted and to develop and administer even more complex fee schedules. The NRC continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee within a class to determine the amount of the annual fee is a fair, equitable, and practical way to recover those costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, the NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993 decision in Allied-Signal.

5. Comment. Several comments were received from uranium recovery licensees suggesting: (1) a tiered fee system that would result in full fees for operating facilities and reduced fees for facilities in shutdown or standby status; (2) a licensee review board be established to review NRC fees annually; (3) the NRC establish standards for its activities, such as a schedule for response intervals for processing licensing actions; and (4) 10 CFR Part 170 bills for services rendered be itemized to show hours spent, a description of the work performed, the names of individuals who completed the work and the dates the work was performed.

Response. In response to a petition of rulemaking from the American Mining Congress (now the National Mining Association) the NRC addressed each of these comments in the Federal Register on April 28, 1995 (60 FR 20918-20922). For the reasons provided in response to the petition, the NRC is not adopting the suggestions from the commenters in this final rule. While denying the petition, the NRC noted that it would continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the licensee or applicant.

6. Relationship between fees and regulatory services.

Comment. Several commenters indicated that although they appreciate NRC's efforts to stabilize fees, they have concerns about 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. The commenters assert that the Commission cannot impose fees under the IOAA unless there is a rational relationship between the fees and the regulatory services provided. The commenters, citing Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985), note that in applying this IOAA requirement, the fees assessed must be reasonably related to, and may not exceed the value of the service to the recipient whatever the agency's cost may be. The commenters then suggest that the NRC fee system may

violate this principle because the proposed hourly rate of \$120 for services provided by agency professionals is unduly high.

Response. The Commission believes that its IOAA fee schedule is fully supported by applicable legal precedent and does not adopt commenters' suggestion. In upholding the Commission's IOAA fee schedule, the United States Court of Appeals for the Fifth Circuit held that the NRC may recover the full cost of providing a service to an identifiable recipient. (Emphasis in original) Mississippi Power & Light v. NRC, 601 F.2d at 230. This is consistent with the earlier teaching of National Cable Television Ass'n Inc. v. FCC, 554 F.2d 1094, 1106 (D.C. 1976) relied upon by the court in Central & S Motor Freight Tariff Ass'n. supra. There the court held that fees should be a reasonable approximation of the attributable costs which the Commission identifies as being expended to benefit the recipient. The Court suggested that a fee might be questionable if the fee unreasonably exceeds the value of the specific services for which it is charged. Here the services provided by the NRC are required for licensees to maintain their licenses and the benefits derived therefrom. The basis for the revised hourly rates is fully discussed in NRC's response to comment A.3. which relate to the hourly rates being assessed by NRC under 10 CFR Part 170. The commenters have provided virtually no evidence that could cause the NRC to conclude that its fees unreasonably exceed the value of the services rendered.

7. Competitive bids by contractors.

Comment. Two commenters indicated that to control costs government agencies routinely require competitive bids for contract labor. The commenters stated that costs incurred by the Oak Ridge National Laboratory (ORNL) are considered by many licensees to be excessive, yet NRC awards contracts to ORNL on an apparently sole source basis. The commenters suggest that NRC consider as large a pool as possible for potential contractors including both government laboratories and private consultants when seeking contract labor.

Response. The NRC is committed to making its regulatory programs more efficient and effective wherever it can do so without diminishing its ability to protect the public health and safety. The NRC follows accepted contracting practices in all contract awards. Before determining whether to place work with a commercial source under the competitive proposal process or with a DOE laboratory, the NRC considers the type of work to be done, the expertise required, and the past performance of the contractor. If the NRC determines that commercial sources are appropriate to perform the work and that conflict of interest can be avoided, a competitive procurement may be initiated. Otherwise, a DOE laboratory may be selected to perform the work. Costs are routinely considered and negotiated in either case.

Costs for particular actions are also affected by the quality of the licensee submittal, the timeliness and quality of licensees responses to NRC questions, delays caused by external factors, the complexity of the site, and the degree of cooperation by the licensee with NRC.

8. Regulatory deficiencies.

Comment. Two commenters indicated that the proposed rule has no provision for allowing licensees to object to unreasonable costs. The commenters stated that without such a mechanism, licensees are at the mercy of the regulators and are expected to pay for services billed and that there is no assurance that any given regulatory function performed by the NRC will be completed expeditiously, efficiently, or within a reasonable range of cost.

Response. While the NRC is committed to the expeditious review of each application and uses all reasonable means of keeping costs as low as feasible, its responsibility for ensuring the public health and safety and environmental protection cannot be compromised. The NRC is committed to the effective use of its increasingly limited resources and therefore cannot afford to use these resources unwisely if it is to successfully perform its mission. 10 CFR Part 170.51 of the Commission's regulations provides the mechanism whereby licensees are allowed to dispute a debt if they believe the debt is incorrect. Disputed debts must

will be billed during their anniversary month of their license.

Some states have some interstate licensees will unavoidably

be submitted in accordance with the provisions of 10 CFR Part 15.31 "Disputed Debts."

9. Fee deferral policy for standard plant and early site reviews.

Comment. One commenter urged the NRC to reestablish the NRC's previous fee deferral policy for standard plant and early site reviews in order to encourage the development of standardized designs and in light of the NRC decision to issue designs to be certified through rulemaking rather than by granting a license for the certified design.

Response. The NRC addressed this issue in the FY 1995 final rule (60 FR 32222; June 20, 1995), indicating that the Commission decided in its FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). The Commission revisited this issue as part of its review of fee policy required by the Energy Policy Act of 1992 (EPA-92) and reconfirmed its FY 1991 decision. The NRC continues to believe that the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these types of applications for

special treatment and shifting additional costs to operating power reactors or other NRC licensees, and does not believe the points made by the commenter are sufficient to change current policy.

10. Credit for services rendered to NRC by licensees.

Comment. One commenter stated that the company performs services for the NRC which include training of NRC personnel, familiarization visits for NRC staff and contractors, and NRC requested tours for foreign and domestic dignitaries. The commenter believes that recovery of the costs by the licensee from the NRC would be justified and suggested that cost recovery for the licensee be implemented via "credits" against NRC annual fees.

Response. The annual fees assessed by the NRC are those necessary to recover 100 percent of its budget authority. In order to give "credits" to licensees, the NRC would have to adjust the entire annual fee structure for a few licensees who volunteer to assist the NRC from time to time. Other licensees would be required to pick up the lost sums attributable to the credits. The NRC notes that it is solely within the discretion of the licensee to determine whether or not such assistance should be provided to the NRC. Therefore, the NRC is not adopting this suggestion.

11. Billing of the Office of Nuclear Regulatory Research activities related to design certification reviews.

Comment. One commenter stated that NRC should bill design certification applicants for the Office of Nuclear Reactor Regulation (NRR) activities only and not bill for any activities relating to the Office of Nuclear Regulatory Research (RES).

Response. This issue was addressed in the final FY 1995 fee rule. After careful consideration of the comments received on the proposed rule, the NRC indicated that beginning with the effective date of the FY 1995 final fee rule the NRC would bill applicants for RES's direct review and evaluation of the standard design in support of the NRC's Final Design Approval (FDA) design certification (60 FR 14673; March 20, 1995). In the final FY 1995 fee rule, the NRC stated that it was changing its fee policy in this area and that it will charge vendors for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, will be included in the annual fee assessed under 10 CFR Part 171 annual fees (60 FR 32224; June 20, 1995). The NRC does not believe the arguments advanced by the commenter are sufficient to warrant a change in agency policy.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1996 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1996, the NRC's budget authority is \$473.3 million, of which \$11.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$462.3 million in FY 1996 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. This amount to be recovered for FY 1996 is about \$41.3 million less than the total amount to be recovered for FY 1995 and \$50.7 million less when compared to the amount to be recovered for FY 1994. The NRC estimates that approximately \$120.5 million will be recovered in FY 1996 from fees assessed under 10 CFR Part 170 and other offsetting receipts. The remaining \$341.8 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1996.

As a result of the reduced amount to be recovered for FY 1996 and the final changes outlined in this section, the FY 1996 annual fees for all licensees have been reduced by 6.5 percent compared to the annual fees assessed for FY 1995. The following examples illustrate changes in annual fees.

<u>Class of Licensees</u>	<u>FY 1995 Annual Fee</u>	<u>FY 1996 Annual Fee</u>
Power Reactors	\$2,936,000	\$2,746,000
Nonpower Reactors	56,500	52,800
High Enriched Uranium Fuel Facility	2,569,000	2,403,000
Low Enriched Uranium Fuel Facility	1,261,000	1,179,000
UF ₆ Conversion Facility	639,200	597,800
Uranium Mills	60,900	57,000
<u>Typical Materials Licensees</u>		
Radiographers	13,900	13,000
Well Loggers	8,100	7,500
Gauge Users	1,700	1,600
Broad Scope Medical	23,200	21,700

The NRC is also continuing its streamlining of the fee structure and process for materials licenses which began in FY 1995 and will make other changes as discussed in Sections A and B. Among the changes will be a change in the billing date for the annual fees imposed on many materials licensees.

The NRC's fees for FY 1996 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee upon publication of the FY 1996 final rule to the licensee or certificate, registration or approval holder not subject to quarterly billing (those licensees who pay annual fees of less

than \$100,000) and whose anniversary date (the first day of the month in which the original license was issued) is before the effective date of the final FY 1996 rule. For these licensees, payment will be due on the effective date of the FY 1996 rule. Those materials licensees whose license anniversary date during FY 1996 falls after the effective date of the final FY 1996 rule will be billed during the anniversary month of the license and payment will be due on the date of the invoice.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services.

Four amendments have been made to 10 CFR 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. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the two professional hourly rates established in FY 1995 in \$170.20 are revised based on the FY 1996 budget. These rates are based on the FY 1996 direct FTEs and that portion of

the FY 1996 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF. These rates are used to determine the Part 170 fees. The NRC has established a rate of \$128 per hour (\$223,314 per direct FTE) for the reactor program. This rate is applicable to all activities whose fees are based on full cost under §170.21 of the fee regulations. A second rate of \$120 per hour (\$209,057 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to all materials activities whose fees are based on full cost under §170.31 of the fee regulations.

The two rates are based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Second, the NRC has adjusted the current Part 170 licensing and inspection fees in §§170.21 and 170.31 for applicants and licensees to reflect the changes in the revised hourly rates.

Third, to continue FY 1995 initiatives for streamlining its fee program and improving the predictability of fees, the NRC has

eliminated certain materials "flat" renewal fees in \$170.31 and has amended \$170.12 accordingly. This final action is also consistent with NRC's recent Business Process Reengineering initiative to extend the duration of certain materials licenses. The NRC published a proposed rule in the Federal Register for comment on September 8, 1995 (60 FR 46784) explaining this initiative. In the September 8, 1995, proposed rule, certain materials licenses would be extended for five years beyond their expiration date. Additionally, comments were requested on the general topic of the appropriate duration of licenses. A final rule was published in the Federal Register on January 16, 1996 (61 FR 1109).

The elimination of 10 CFR Part 170 materials "flat" renewal fees continues to recognize that the NRC's "regulatory service" provided to licensees, as referred to in OBRA-90, is comprised of the total regulatory activities that the NRC determines are needed to regulate a class of licensees. These regulatory activities include not only renewals but also inspections, research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This final action does not result in any net fee increases for affected licensees and would provide those licensees with greater fee predictability, a frequent licensee request in comments on past fee rules. The materials annual fees, which include the cost for

any renewals, are effective for FY 1996. Materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will receive a refund for those payments, as appropriate.

Fourth, the language in §170.31, Category 15, relating to export and import licenses, is amended to clarify that export and import of materials includes the export and import of radioactive waste. The NRC amended 10 CFR Part 110 effective August 21, 1995 (60 FR 37556; July 21, 1995), to require specific licenses for the export or import of radioactive waste.

In summary, the NRC has (1) revised the two 10 CFR Part 170 hourly rates; (2) revised the licensing fees assessed under 10 CFR Part 170 to reflect the cost to the agency of providing the service; (3) eliminated the materials "flat" renewal fees in §170.31 and amended §170.12 accordingly; and (4) amended Category 15 in §170.31 to make clear that fees will be assessed for licenses authorizing the export or import of radioactive waste.

B. Amendments to 10 CFR 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 NRC.

Three amendments have been made to 10 CFR Part 171. First, the NRC is amending §§171.15 and 171.16 to revise the annual fees for FY 1996 to recover approximately 100 percent of the FY 1996 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC 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. If either case occurred, 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 receipts as well as on the number of licensees paying the fees. The NRC does not believe the changes to the FY 1996 budget compared to the FY 1995 budget warrant establishing new baseline fees for FY 1996. Therefore, the NRC is establishing the FY 1996 annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. The 6.5 percent reduction is based on the changes in the budget to be recovered from fees, the amount of the budget recovered for 10 CFR Part 170 fees and other offsetting receipts, and changes in the number of licensees paying annual fees. Table I shows the total budget and fee amounts for FY 1995 and FY 1996.

TABLE I

Calculation of the Percentage Change to the FY 1995 Annual Fees

(Dollars in Millions)

	<u>FY95</u>	<u>FY96</u>
Total Budget	\$525.6	\$473.3
Less NMF	<u>-22.0</u>	<u>-11.0</u>
Total Fee Base	\$503.6	\$462.3
Less Part 170 Fees and Other Receipts	<u>141.1</u>	<u>120.5</u>
Total Annual Fee Amount	\$362.5	\$341.8

As shown in Table I, the total amount to be recovered from annual fees in FY 1996 is \$20.7M (\$341.8-\$362.5) or 5.7 percent less than the amount that was to be recovered from annual fees in FY 1995. This difference is the net change resulting from a reduction in the budget and a reduction in the expected collection from 10 CFR Part 170 fees and other receipts. The NRC notes that the reduction in 10 CFR Part 170 fees for FY 1996 results primarily from the fact that NRC had a one-time collection of five quarters of 10 CFR Part 170 fees in FY 1995 as a result of changes in its billing practices which permits the NRC to bill for services shortly after they are rendered.

In addition to changes in the budget and 10 CFR Part 170

fees and other receipts, the number of licensees to pay fees in FY 1996 changed compared to FY 1995. Also, the amount of the small entity surcharge (difference between annual fee and small entity fee) decreased as the annual fees decreased. The changes in the number of licensees in the various classes plus the reduction in the small entity surcharge result in an additional decrease in the annual fee per licensee of 0.8 percent. Thus the total change in the annual fees for FY 1996 compared to FY 1995 is a decrease of 6.5 percent (5.7 percent plus 0.8 percent).

Second, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of annual fees for FY 1996 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. All other licensees and approval holders who held a license or approval on October 1, 1995, are subject to FY 1996 annual fees. This change is made in recognition of the fact that since the final FY 1995 rule was published in June 1995, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1995 final rule became effective requesting further clarification and information concerning the annual fees 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, 1995. Similar situations existed after the FY 1991-1994 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.

Third, beginning in FY 1996, the NRC will assess §171.16(d) annual fees based on the anniversary of the date the license was originally issued for those materials licenses whose annual fees are less than \$100,000. Accordingly, a new paragraph is added to §171.19. For example, if the original license was issued on June 17, then the anniversary date of that materials license, for annual fee purposes is June 1. The licensee will be billed in June of each year for the annual fees in effect on the anniversary date (the first day of the month that the original license was issued) of the license. For FY 1996, those affected materials licenses with a license anniversary date between October 1, 1995, and the effective date of the final FY 1996 fee rule will be billed upon publication of the final rule in the Federal Register and annually thereafter during the anniversary month of the license. Those affected materials licenses whose license anniversary date is on or after the effective date of the final FY 1996 fee rule will be billed during the anniversary month of the license and annually thereafter based on the annual

fee in effect at the time of billing. The specific license categories of materials licensees affected by this final change are listed in §171.19(d) of this final rule.

Billing certain materials licensees on the anniversary date of the license will allow the NRC to make the billing process more efficient by distributing the billing and collection of annual fee invoices over the entire year. The current practice is to bill over 6,000 materials licenses simultaneously during the fiscal year. Section 171.19 is amended to credit quarterly partial annual fee payments for FY 1996 already made by certain licensees in FY 1996 either toward their total annual fee to be assessed, or to make refunds, if necessary. Materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will receive a refund for those payments, as appropriate.

The final 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 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 will 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.

IV. Section-by-Section Analysis

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

Part 170

Section 170.12 Payment of fees.

This section is amended to conform to the streamlining changes being made by the NRC. Section 170.12(a), which describes application fees, is amended to recognize that the NRC will not issue a new license or amendment prior to receipt of the prescribed fee. Section 170.12(d), which describes renewal fees, is amended to recognize that materials "flat" renewal fees are eliminated. Section 170.12(g), which discusses inspection fees, is amended to recognize that materials "flat" inspection fees were eliminated in the FY 1995 final rule (60 FR 32218; June 20, 1995).

Section 170.20 Average cost per professional staff hour.

This section is amended to establish two professional staff-hour rates based on FY 1996 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 1996 for all activities whose fees are based on full cost under \$170.21 is \$128 per hour, or \$223,314 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 is \$120 per hour, or \$209,057 per direct FTE. The rates are based on the FY 1996 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWP. 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 II

FY 1996 Budget Authority to be Included in Hourly Rates
(Dollars in millions)

<u>Salary and Benefits</u>	<u>Reactor Program</u>	<u>Materials Program</u>
Program	\$149.6	\$46.3
Allocated Agency Management & Support	<u>40.9</u>	<u>12.7</u>
Subtotal	\$190.5	\$59.0
<u>General and Administrative Support (G&A)</u>		
Program Travel and Other Support	11.7	3.2
Allocated Agency Management and Support	<u>69.5</u>	<u>21.5</u>
Subtotal	\$81.2	\$24.7
Less offsetting receipts	<u>.1</u>	<u>----</u>
Total Budget Included in Hourly Rate	\$271.6	\$83.7
Program Direct FTEs	1,216.2	400.5
Rate per Direct FTE	\$223,314	\$209,057
Professional Hourly Rate	\$128	\$120

Dividing the \$271.6 million budget for the reactor program by the number of reactor program direct FTEs (1216.2) results in a rate for the reactor program of \$223,314 per FTE for FY 1996.

Dividing the \$81.7 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (400.5) results in a rate of \$209,057 per FTE for FY 1996. The Direct FTE Hourly Rate for the reactor program is \$128 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$223,314) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$120 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$209,057) by the number of productive hours in one year (1744 hours). The method used to calculate the FY 1996 hourly rate is the same as the method used in the FY 1995 rule. The FY 1996 rate is slightly higher than the FY 1995 rate due in part to the Federal pay raise given to all Federal employees in January 1995.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The NRC is revising the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1996 budgeted costs and to recover costs incurred by the NRC 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, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1996 hourly rate for the reactor program, as shown in §170.20. Although the average amounts of time needed to review import and export licensing applications have not changed, the fees in §170.21, facility Category K, have increased from FY 1995 as a result of the increase in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of §170.21 is revised to provide that professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file that are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the 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, are assessed at the applicable 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, which are based on full-cost recovery, are modified to recover the FY 1996 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on both the professional hourly rate as shown in §170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application ("flat" fees) are adjusted to reflect the increase in the professional hourly rate from \$116 per hour in FY 1995 to \$120 per hour in FY 1996. The "flat" renewal fees for certain materials licenses in §170.31 are eliminated and combined with the materials annual fees in §171.16(d).

The amounts of the licensing "flat" fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be 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.

Fee Category 15, covering the fees for export and import

licenses, is amended to include clarifying language that export and import of materials includes the export and import of radioactive waste. The NRC amended 10 CFR Part 110 on July 21, 1995 (60 FR 37556), to require specific licenses for the export and import of radioactive waste. The final rule became effective August 21, 1995.

The licensing "flat" fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule are subject to the revised fees in this final rule. Although the average amounts of time needed to review licensing applications have not changed, the "flat" fees in §170.31 have increased from FY 1995 as a result of the increase in the hourly rate.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$120, as shown in §170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section are revised as described below. Paragraph (d) is removed and reserved and paragraphs (a), (b), (c)(1), (c)(2) and (e) are revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1996.

Paragraph (b) is revised in its entirety to establish the FY 1996 annual fee for operating power reactors and to change fiscal year references from FY 1995 to FY 1996. The fees are established by reducing FY 1995 annual fees (prior to rounding) by 6.5 percent. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) and continue to be shown for convenience purposes. Paragraphs (c)(1) is revised in its entirety and (c)(2) is removed and reserved.

With respect to Big Rock Point, a smaller, older reactor, the NRC hereby grants a partial exemption from the FY 1996 annual fees similar to FY 1995 based on a request filed with the NRC in accordance with §171.11.

Each operating power reactor, except Big Rock Point, will pay an annual fee of \$2,746,000 in FY 1996.

Paragraph (d) is removed and reserved.

Paragraph (e) is revised to show the amount of the FY 1996 annual fee for nonpower (test and research) reactors. In FY 1996, the annual fee of \$52,800 is 6.5 percent below the FY 1995 level. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at §171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at §171.11(a)(2). The NRC amended §171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. 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.

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. 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 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 made 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 this final rule for convenience.

Section 171.16(d) is revised to establish the FY 1996 annual fees for materials licensees, including Government agencies, licensed by the NRC. These fees were determined by reducing the FY 1995 annual fees (prior to rounding) by 6.5 percent.

For the first time, the NRC is combining the "flat" material renewal fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171. As described in the Federal Register on September 8, 1995 (60 FR 46784), recent NRC internal reviews and regulatory

impact surveys of materials licensees have highlighted areas in which the current materials licensing process can be improved. The NRC has completed the preliminary phases of its Business Process Reengineering (BPR) initiative to redesign the process of licensing medical, academic, and industrial users of byproduct materials as well as with regard to some small scope users of source and special nuclear materials. The NRC has extended, by rulemaking, certain specific materials licenses by five years from the current expiration dates of those licenses. Resources that would have otherwise been used to renew these licenses would be devoted to the BPR project. The NRC is also examining whether to permanently change the license duration for materials licenses. The NRC estimates that approximately 80 percent of its approximately 6,500 materials licenses will be extended by the final rulemaking published in the Federal Register January 20, 1996 (60 FR 1109). Consistent with this change in license renewals, the NRC is, for fee purposes, combining the materials "flat" renewal fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171.

This action also recognizes that the NRC's "regulatory service" provided to licensees, as referred to in OBRA-90, is comprised of the total regulatory activities that the NRC determines are needed to regulate a class of licensees. These regulatory activities include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses

to allegations, incident investigations, and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept of OBRA-90, the NRC believes that materials licensees' "flat" renewal fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the renewal fee, has, in effect, already been implemented for most materials licensees. First, materials licensees currently pay a "flat fee" per renewal based on the average cost of a renewal for their fee category, and second, the renewal term of five years is identical for most materials licensees. Thus, licensees in the same materials license fee category already pay essentially the same average annual cost for renewals. Further, the average cost will decrease to a relatively small amount as a result of the five-year extension and potential change in license duration. Therefore, combining renewal and annual fees results in essentially the same average cost per license over time. This approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic renewals. Because certain materials FY 1996 annual fees will include renewals, those materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will be issued a refund, as appropriate.

Beginning in FY 1996, the NRC will also bill annual fees for

most materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This final rule will apply to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. Billing most materials licenses on the anniversary date of the license will allow the NRC to improve the efficiency of its billing process; under this final rule an average of approximately 500 annual fee invoices will be sent to materials licensees each month. The current practice of billing over 6,000 materials licensees simultaneously each fiscal year is eliminated. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will be billed in June of each year for the annual fee in effect on June 1. This final change to the billing system means that during the transition period of FY 1996 affected materials licensees with an anniversary date falling between October 1, 1995, and the effective date of the FY 1996 fee rule will receive a bill payable on the effective date of the FY 1996 final rule. Affected materials licensees with license anniversary dates falling on or after the effective date of the FY 1996 final rule

will be billed during their anniversary month of their license. Under this final rule, some materials licensees will unavoidably receive two annual fee bills during the 12 month transition period. For example, a materials licensee who paid its FY 1996 annual fee bill in May 1996, the planned effective date of the FY 1996 fee rule, will receive a bill six months later in November 1996 (FY 1997) if November is the anniversary month of that materials license. In this example, the licensee will pay the same annual fee in FY 1997 (November) as he paid in FY 1996 (May). Materials licensees will continue to pay fees at the FY 1996 rate in FY 1997 until such time as the FY 1997 final fee rule becomes effective. Each bill would be for a different fiscal year, therefore, no double billing would occur.

The NRC believes that the efficiencies gained by billing certain materials annual fees throughout the year as well as having materials licensees know exactly when they will be billed each year for the annual fee outweigh the inconveniences that may be caused during the transition period. New licenses issued during FY 1996 will receive a prorated annual fee in accordance with the current proration provision of \$171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for FY 1996. New materials licenses issued on or after April 1, 1996, will not be assessed an annual fee for FY 1996. Thereafter, the full annual fee is due and payable each

subsequent fiscal year on the anniversary date of the license. Beginning with the effective date of this FY 1996 final rule, affected licensees will be billed and will pay the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

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 amount or range of the FY 1996 annual fees for all materials licensees is summarized as follows:

Materials Licenses
Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel facility	\$2,403,000
Part 70 - Low enriched fuel facility	\$1,179,000
Part 40 - UF ₆ conversion facility	\$597,800
Part 40 - Uranium recovery facilities	\$20,600 to \$57,000
Part 30 - Byproduct Material Licenses	\$450 to \$21,700 ^{1/}

Part 71 - Transportation of Radioactive Material \$950 to \$72,700

Part 72 - Independent Storage of Spent Nuclear Fuel \$260,900

4/ Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$388,400.

Section 171.16(e) is revised in its entirety to indicate the activities that were a part of the additional charge (surcharge) included in the FY 1995 annual fees. These activities are listed and continue to be shown for convenience.

Footnote 1 of 10 CFR 171.16(d) is amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. All other licensees and approval holders who held a license or approval on October 1, 1995, are subject to the FY 1996 annual fees.

Section 171.19 Payment.

Paragraph (b) is revised to give credit for partial payments made by certain licensees in FY 1996 toward their FY 1996 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1996 will have been made by operating power reactor licensees and some large materials licensees before this final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid renewal fees for renewal applications that were filed in FY 1996, whereas this final rule includes the renewals in the annual fee. The NRC will refund these renewal fee payments, as appropriate. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) is revised to update fiscal year references and to delete the references concerning payment requirements for those licensees whose annual fees are less than \$100,000.

A new paragraph (d) is added to cover those licensees whose annual fees are less than \$100,000 and who will be billed on the anniversary date of their license beginning in FY 1996.

During the past five years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that 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).

The NRC reinstated the exemption from 10 CFR Part 171 annual fees for nonprofit educational institutions on April 18, 1994 (59 FR 12539; March 17, 1994). In that final rule, the NRC indicated that although nonprofit research institutions were not exempt from annual fees, such institutions were free to file an exemption request based on the "public good" concept if they felt they could qualify. Several nonprofit research institutions have

since filed and been granted an exemption from the annual fees on that basis. In addition, some Federal agencies who hold materials licenses have filed for exemption from annual fees based on the public good concept as well. The requests from Federal agencies to receive public good exemptions have been denied by the NRC. The NRC did not intend to extend public good exemptions to Federal agencies.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final 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 final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final 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.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final 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 to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in

Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held that--

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget

Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with §171.13, is publishing the final amount of the FY 1996 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1996 budget of \$473.3 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(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).

VIII. 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 final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1996. The final rule results in a decrease in the annual fees charged to all 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 final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final 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.

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.

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. 552 and 553, the NRC is adopting 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, 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. In Section 170.12, paragraph (d)(1) is removed and reserved and paragraphs (a) and (g) are revised to read as follows:

§170.12 Payment of fees.

(a) Application fees. Each application for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. The NRC will not issue a new license or

amendment prior to the receipt of the prescribed fee. All application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

* * * * *

(d) * * *

(1) [Reserved].

* * * * *

(g) Inspection fees. Fees for all inspections subject to full cost recovery will be assessed on a per inspection basis for completed inspections and are payable, on a quarterly basis, upon notification by the Commission. Inspection costs include preparation time, time on site, and documentation time and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

* * * * *

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 the following applicable professional staff-hour rates:

Reactor Program	\$128 per hour
(\$170.21 Activities)	

Nuclear Materials and	
Nuclear Waste Program	\$120 per hour
(\$170.31 Activities)	

4. In §170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are 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	Fees ^{1/ 2/}
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* * * * *

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the 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 exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).

Application-new license	\$7,800
Amendment	\$7,800

2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).

Application-new license \$4,800
Amendment \$4,800

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

Application-new license \$3,000
Amendment \$3,000

4. Application for export of facility components and equipment not requiring Commissioner review, 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 in-depth analysis or review.

1/ Fees will not be charged for orders issued by the Commission pursuant to §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§50.12, 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. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

2/ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For 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 the final rule will be determined at the professional rates in effect at the time the service was provided. 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 any 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 applicable 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.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

<u>Category of materials licenses and type of fees^{1/}</u>	<u>Fee^{2/}, \$^{3/}</u>
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1. Special nuclear material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing

possession only:

License, Renewal, Amendment Full Cost

Inspections Full Cost

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):

License, Renewal, Amendment Full Cost

Inspections Full Cost

- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:⁴

Application - New license \$550

Amendment \$300

- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which

the licensee shall pay the same fees as those
for Category 1A:²

Application - New license	\$600
Amendment	\$290

E. Licenses for construction and operation of
a uranium enrichment facility.

Application	\$125,000
License, Renewal, Amendment . . .	Full Cost
Inspections	Full Cost

2. Source material:

A. (1) Licenses for possession and use of source
material in recovery operations such as
milling, in-situ leaching, heap-leaching,
refining uranium mill concentrates to
uranium hexafluoride, ore buying stations,
ion exchange facilities and in processing
of ores containing source material for
extraction of metals other than uranium or
thorium, including licenses authorizing the
possession of byproduct waste material
(tailings) from source material recovery

operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).

License, renewal, amendment	Full Cost
Inspections	Full Cost

- (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).

License, renewal, amendment	Full Cost
Inspections	Full Cost

- B. Licenses which authorize the possession, use and/or installation of source material for shielding:

Application - New license	\$160
Amendment	\$240

- C. All other source material licenses:

Application - New license	\$2,800
Amendment	\$420

3. Byproduct material:

- A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	\$3,000
Amendment	\$550

- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	\$1,200
Amendment	\$580

- C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New license	\$4,100
Amendment	\$520

- 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:

Application - New license	\$1,500
Amendment	\$430

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New license	\$1,200
Amendment	\$360

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$1,500
Amendment	\$370

- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$6,000
Amendment	\$780

- H. Licenses issued pursuant to Subpart A of Part 32 of

this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	\$2,400
Amendment	\$1,000

- I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	\$4,400
Amendment	\$860

- J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct

material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,600
Amendment	\$290

- K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,300
Amendment	\$310

- L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do

not authorize commercial distribution:

Application - New license	\$4,300
Amendment	\$660

- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application - New license	\$1,500
Amendment	\$610

- N. Licenses that authorize services for other licensees, except:

(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and

(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application - New license	\$1,900
Amendment	\$590

- O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:

Application - New license	\$3,900
Amendment	\$720

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application - New license	\$550
Amendment	\$300

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 authorized to receive or dispose of waste material:

License, renewal, amendment . . . Full Cost

Inspections Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license \$3,400

Amendment \$410

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license \$1,700

Amendment \$290

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application - New license \$3,200
Amendment \$640

- B. Licenses for possession and use of byproduct material for field flooding tracer studies:

License, renewal, amendment . . . Full Cost

6. Nuclear laundries:

- A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application - New license \$5,100
Amendment \$790

7. Human use of byproduct, source, or special nuclear material:

- A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material,

source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license \$2,800
Amendment \$470

- B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license \$3,000
Amendment \$580

- C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license \$1,400
Amendment \$440

8. Civil defense:

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application - New license	\$760
Amendment	\$350

9. Device, product, or sealed source safety evaluation:

- A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

Application - each device	\$3,400
Amendment - each device	\$1,200

- B. 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:

Application - each device	\$1,700
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Amendment - each device \$600

- C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application - each source \$720

Amendment - each source \$240

- D. Safety evaluation of sealed sources 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:

Application - each source \$360

Amendment - each source \$120

10. Transportation of radioactive material:

- A. Evaluation of casks, packages, and shipping containers:

Approval, Renewal, Amendment . . Full Cost

Inspections Full Cost

B. Evaluation of 10 CFR Part 71 quality assurance programs:

Application - Approval	\$340
Amendment	\$250
Inspections	Full Cost

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment . .	Full Cost
Inspections	Full Cost

12. Special projects:^{2/}

Approvals and preapplication/ licensing activities	Full Cost
Inspections	Full Cost

13. A. Spent fuel storage cask Certificate of Compliance:

Approvals	Full Cost
Amendments, revisions, and supplements	Full Cost
Reapproval	Full Cost

B. Inspections related to spent fuel storage cask

Certificate of Compliance Full Cost

C. Inspections related to storage of spent fuel under
§72.210 of this chapter Full Cost

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 of this chapter:

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

15. Import and Export licenses:

Licenses issued pursuant to 10 CFR Part 110 of this chapter
for the import and export only of special nuclear material,
source material, tritium and other byproduct material, heavy
water, or nuclear grade graphite.

A. Application for export or import of high enriched
uranium and other materials, including radioactive
waste, which must be reviewed by the Commissioners and
the Executive Branch, for example, those actions under
10 CFR 110.40(b). This category includes application
for export or import of radioactive wastes in multiple

forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.

Application-new license	\$7,800
Amendment	\$7,800

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

Application-new license	\$4,800
Amendment	\$4,800

- C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

Application-new license	\$3,000
Amendment	\$3,000

- D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

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

- E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.

Amendment	\$120
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16. Reciprocity:

Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of	
Form 241)	\$1,100
Revisions	\$200

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 certain renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) Application fees. Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, 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 the prescribed application fee of \$125,000.

(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 category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and

nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under \$170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with \$170.12(g).

^{2/} Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under 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.

^{1/} 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 the final rule will be determined at the professional rates in effect at the time the service was provided. For 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 applicable rate established in \$170.20. The minimum total review cost is twice the hourly rate shown in \$170.20.

2/ 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 that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application

fee for fee Category 1C only.

2' Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety 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.

6. 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).

7. In §171.15, paragraph (d) is removed and reserved and paragraphs (a), (b), (c) (1), (c) (2) and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in §171.11(a) (1) and (a) (2).

(b) The FY 1996 uniform annual fee for each operating power reactor which must be collected by September 30, 1996, is \$2,746,000. This fee has been determined by adjusting the FY

1995 annual fee downward by approximately 6 percent. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under 10 CFR Part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center.

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

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities; and

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(d) [Reserved].

(e) The FY 1996 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under §171.11(a), are as follows:

Research reactor	\$52,800
Test reactor	\$52,800

* * * * *

8. In §171.16, the introductory text of paragraph (c) and paragraphs (c) (1), (c) (4), (d), and (e) are revised to read as follows:

§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.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1996 as follows:

<u>Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$350,000 to \$5 million	\$1,800
Less than \$350,000	\$400
<u>Manufacturing entities that have an average of 500 employees or less</u>	
35 to 500 employees	\$1,800
Less than 35 employees	\$400
<u>Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)</u>	
20,000 to 50,000	\$1,800
Less than 20,000	\$400
<u>Educational Institutions that are not State or Publicly</u>	

Supported, and have 500 Employees
or Less.

35 to 500 employees	\$1,800
Less than 35 employees	\$400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1996, the maximum annual fee a small entity is required to pay is \$1,800 for each category applicable to the license(s).

(d) The FY 1996 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1996 annual fees, which must be collected by September 30, 1996, have been determined by adjusting downward the FY 1995 annual fees by approximately 6 percent. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC
(See footnotes at end of table)

Category of materials licenses

Annual Fees ^{11. 21. 11}

1. Special nuclear material:

A. (1) Licenses for possession and use
of U-235 or plutonium for fuel
fabrication activities.

(a) Strategic Special Nuclear Material:

Babcock & Wilcox	SNM-42	\$2,403,000
Nuclear Fuel Services	SNM-124	\$2,403,000

(b) Low Enriched Uranium in Dispersable Form Used for
Fabrication of Power Reactor Fuel:

Combustion Engineering (Hematite)	SNM-33	\$1,179,000
General Electric Company	SNM-1097	\$1,179,000
Siemens Nuclear Power	SNM-1227	\$1,179,000
Westinghouse Electric Company	SNM-1107	\$1,179,000

(2) All other special nuclear materials licenses not

included in Category 1.A.(1) which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

B&W Fuel Company	SNM-1168	\$469,200
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(b) All Others:

General Electric	SNM-960	\$318,600
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B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). \$260,900

C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. \$1,200

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which

the licensee shall pay the same fees
as those for Category 1.A. (2). \$2,800

E. Licenses for the operation of a
uranium enrichment facility. \$ N/A¹¹

2. Source material:

A. (1) Licenses for possession and use of
source material for refining uranium
mill concentrates to uranium
hexafluoride. \$597,800

(2) Licenses for possession and use of
source material in recovery operations
such as milling, in-situ leaching,
heap-leaching, ore buying stations,
ion exchange facilities and in processing
of ores containing source material for
extraction of metals other than uranium
or thorium, including licenses authorizing
the possession of byproduct waste material
(tailings) from source material recovery
operations, as well as licenses authorizing
the possession and maintenance of a facility
in a standby mode.

Class I facilities' \$57,000

Class II facilities' \$32,200

Other facilities' \$20,600

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4). \$41,800

(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2). \$7,400

B. Licenses which authorize only the possession, use and/or installation of source material for shielding. \$450

C. All other source material licenses. \$8,100

3. Byproduct material:

- A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$15,400
- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$5,200
- C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this

chapter when included on the same
license. \$10,400

- 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 also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$4,100
- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). \$2,900
- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed

for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$3,500

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$18,100

H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this

chapter.

\$4,600

- I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. \$8,200
- J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. \$3,500

- K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. \$3,000
- L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. \$11,400
- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution. \$5,100

N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C. \$5,600

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license. \$13,000

P. All other specific byproduct material licenses, except those in Categories 4A through 9D. \$1,600

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 authorized to receive or dispose of waste material. \$94,300^{2/}
- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to

receive or dispose of the material. \$13,300

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. \$7,100

5. Well logging:

- A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. \$7,500
- B. Licenses for possession and use of byproduct material for field flooding tracer studies. \$12,200

6. Nuclear laundries:

- A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. \$13,600
7. Human use of byproduct, source, or special nuclear material.
- A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. \$9,500
- B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special

nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.² \$21,700

- C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.² \$4,300

8. Civil defense:

- A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. \$1,600

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. \$6,700
- 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. \$3,400
- C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. \$1,400
- D. Registrations issued for the safety

evaluation of sealed sources
 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. \$720

10. Transportation of radioactive material:

- A. Certificates of Compliance or other
 package approvals issued for design of
 casks, packages, and shipping containers.

Spent Fuel, High-Level Waste, and plutonium air packages	N/A ^{2/}
Other Casks	N/A ^{2/}

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

Users and Fabricators	\$72,700
Users	\$950

11. Standardized spent fuel facilities. N/A^{2/}

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.	\$260,900
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/}
16.	Reciprocity	N/A ^{8/}
17.	Master materials licenses of broad scope issued to Government agencies.	\$388,400
18.	Department of Energy:	
	A. Certificates of Compliance	\$1,077,000 ^{10/}
	B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	\$1,812,000

1/ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

2/ Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72

of this chapter.

^{1/} For FYs 1997 and 1998, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

^{4/} A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

^{2/} Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

^{2/} Standardized spent fuel facilities, Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

^{2/} Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while

they are licensed to operate.

8/ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

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.

11/ No annual fee has been established because there are currently no licensees in this particular fee category.

(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 under 10 CFR Part 170 licensing and inspection fees 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.

* * * * *

9. In §171.19, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§171.19 Payment.

* * * * *

(b) For FY 1996 through FY 1998, 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. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will refund any "flat" materials renewal fees payments received for renewal applications filed in FY 1996, as appropriate. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee

upon publication of the final rule or on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.


(c) For FYs 1996 through 1998, annual fees in the amount of \$100,000 or more and described in the Federal Register notice pursuant to §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FYs 1996 through 1998, annual fees of less than \$100,000 must be paid as billed by the NRC. Beginning in FY 1996, materials license annual fees that are less than \$100,000 will be billed on the anniversary of the license. The materials licensees that will be billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. During the transition year of FY 1996, licensees with license anniversary dates falling between October 1, 1995, and the effective date of the FY 1996 final rule will receive an annual fee bill payable on the effective date of the final rule, and licensees with license

anniversary dates that fall on or after the effective date of the final rule will be billed on the anniversary of their license. Starting with the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license.

Dated at Rockville, Maryland, this 25th day of March, 1996.

For the Nuclear Regulatory Commission.


James M. Taylor
Executive Director for Operations.

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. 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 fee rule and is using them in this FY 1996 final 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 1996 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; for FY 1995 about \$503.6 million and the amount to be collected in FY 1996 is approximately \$462.3 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) and in FY 1995 (60 FR 32218; June 20, 1995) 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 1991-1995.

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 receipts as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is establishing the FY 1996 annual fees for all licensees at 6.5 percent below the FY 1995 annual fees. The NRC believes that the 6.5 percent downward adjustment to the FY 1995 annual fees is not a substantial enough change to warrant establishing a new baseline for FY 1996.

The NRC is also continuing to streamline the fee structure and process for materials licenses, efforts which began in FY

1995. Two changes are being made in this area.

First, the NRC will assess annual fees for certain materials licenses on the anniversary date of the license. Billing certain materials licenses on the anniversary date of the license will allow NRC to make improved efficiencies in the billing process whereby approximately 500 annual fee invoices will be sent to materials licensees each month. The current practice of billing over 6,000 materials licensees at the same time in the fiscal year is eliminated. The NRC believes that the efficiencies gained by billing certain materials annual fees on a monthly basis as well as materials licensees knowing exactly when they will be billed each year for the annual fee outweigh the inconveniences that may be caused during the FY 1996 transition period.

Second, the NRC is further streamlining the materials fee program and improving the predictability of fees by eliminating the materials "flat" renewal fees in \$170.31. This action is consistent with the NRC's recent Business Process Reengineering initiative to extend the duration of certain materials licenses. The NRC published a proposed rule explaining this initiative in the Federal Register on September 8, 1995, (60 FR 46784). In the proposed rule, certain materials licenses would be extended for five years beyond their expiration date. Additionally, comments were requested on the general topic of the appropriate duration

of licenses. A final rule was published in the Federal Register on January 16, 1996 (61 FR 1109).

II. Impact on small entities.

The comments received on the proposed FY 1991-1995 fee rule revisions and the small entity certifications received in response to the final FY 1991-1995 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 1991-1994 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 five years, approximately 2,900 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) and in the FY 1995 rule (60 FR 32218; June 20, 1995). 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 1991-1995 evaluations 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 1996, 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 1996, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1996, the NRC concludes that the 10 CFR Part 170 materials license fees do not have a significant impact on a substantial

number of small entities and that the 10 CFR Part 171 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 1996 costs 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 1996, 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 1992-1995, 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 now includes manufacturing companies with a relatively small number of employees.

III. Summary.

The NRC has determined the 10 CFR Part 171 annual fees 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-for-profit 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. Therefore, the analysis and conclusions

established in the FY 1991-1995 rules remain valid for this final
rule for FY 1996.



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

February 24, 1997

AF 55-1
PDR

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1996 by assessing license and annual fees. For FY 1997, the NRC must collect approximately \$462.3 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1997 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1997 annual fees will increase by about 8 percent as compared to FY 1996. The increase in the annual fees results primarily from a reduction in the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts as well as a reduction in the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. The notice provides for a 30-day public comment period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Senator Harry Reid

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PDR FR
170 62FR8885 PDR

F/18



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

February 24, 1997

AF 55-1
PDR

The Honorable John R. Kasich, Chairman
Committee on the Budget
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

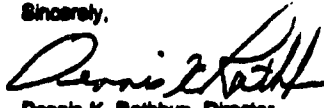
The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1997, the NRC must collect approximately \$462.3 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1997 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1997 annual fees will increase by about 8 percent as compared to FY 1996. The increase in the annual fees results primarily from a reduction in the amount of the budget recovered by 10 CFR Part 170 fees and other cost setting receipts as well as a reduction in the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. The notice provides for a 30-day public comment period.

Sincerely,


Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Representative John M. Spratt, Jr.



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

February 24, 1997

The Honorable Pete V. Domenici, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1996 by assessing license and annual fees. For FY 1997, the NRC must collect approximately \$482.3 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1997 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1997 annual fees will increase by about 8 percent as compared to FY 1996. The increase in the annual fees results primarily from a reduction in the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts as well as a reduction in the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. The notice provides for a 30-day public comment period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Senator Frank R. Lautenberg

AF 55-1
PDR



February 24, 1997

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1996 by assessing license and annual fees. For FY 1997, the NRC must collect approximately \$462.3 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1997 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1997 annual fees will increase by about 8 percent as compared to FY 1996. The increase in the annual fees results primarily from a reduction in the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts as well as a reduction in the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. The notice provides for a 30-day public comment period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Senator Bob Graham



AFJS-1
TDR

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

February 24, 1997

The Honorable Dan Scheffer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1997, the NRC must collect approximately \$482.3 million through these fees.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Part 170 and 171. The proposed amendments to 10 CFR Part 170 would revise the professional hourly rates and "flat" licensing fees to reflect the costs of providing NRC licensing services to applicants and licensees.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1997 annual fee to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. All of the FY 1997 annual fees will increase by about 8 percent as compared to FY 1996. The increase in the annual fees results primarily from a reduction in the amount of the budget recovered by 10 CFR Part 170 fees and other offsetting receipts as well as a reduction in the number of licensees paying fees. Those NRC licensees that can qualify as a small entity under the NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. The notice provides for a 30-day public comment period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision to
10 CFR Parts 170 and 171

cc: Representative Ralph M. Hall



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

April 30, 1998

The Honorable Joel Hefley
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Hefley:

I am responding to your letter dated March 31, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson

9805130026 980430
PDR COMS NRCC
CORRESPONDENCE PDR

F/19



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

April 30, 1998

The Honorable Loretta Sanchez
United States House of Representatives
Washington, D.C. 20515

Dear Congresswoman Sanchez:

I am responding to your letter dated April 2, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable Pat Danner
United States House of Representatives
Washington, D.C. 20515

Dear Congresswoman Danner:

I am responding to your letter dated March 31, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable J.C. Watts, Jr.
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Watts:

I am responding to your letter dated March 31, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology), and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable Ed Pastor
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Pastor:

I am responding to your letter dated March 31, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable Joe Knollenberg
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Knollenberg:

I am responding to your letter dated April 3, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable Rob Portman
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Portman:

I am responding to your letter dated April 9, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic and therapeutic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable Paul D. Coverdell
United States Senate
Washington, D.C. 20510

Dear Senator Coverdell:

I am responding to your letter dated April 13, 1998, regarding the concerns of your constituent, Dr. Lee Martin, Jr. Dr. Martin expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, he was concerned about the training and experience requirements that would be applicable to personnel involved in the medical uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as your constituent's when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



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

April 30, 1998

The Honorable George R. Nethercutt, Jr.
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Nethercutt:

I am responding to your letter dated April 14, 1998, where you expressed reservations about possible changes in the U.S. Nuclear Regulatory Commission's (NRC's) 10 CFR Part 35 regulations on medical use of byproduct material. In particular, you were concerned about the training and experience requirements that would be applicable to personnel involved in diagnostic uses of unsealed byproduct material.

The NRC staff is scheduled to provide its recommendations on proposed revisions to Part 35 to the Commission in June 1998. The proposed rule is being developed using an increased public participation process that included public workshops; meetings with various medical professional societies (including the American College of Radiology); and the posting of a "strawman" rule text on the Internet for comments. The staff is carefully considering the comments received during these interactions, in preparing the proposal. After Commission approval, a proposed rule will be published in the Federal Register for public comment. We expect to hold additional public meetings during the comment period later this year.

The issue of training and experience has received the most comments during the development of the proposed rule. Viewpoints on this issue have varied. The Commission has received comments both supporting reduction in requirements affecting personnel in the diagnostic area, including the American College of Cardiology and the American Society of Nuclear Cardiologists, and favoring keeping the presently existing requirements. The staff draft, while reducing the number of hours required for certain medical modalities, also specified a focus on radiation safety and proposed that personnel competency be verified through an examination. This proposal appears to be in keeping with the direction the Commission provided to the staff namely, to develop a risk-informed, and where appropriate, a more performance-based rule and it addressed an objection often expressed, by some public commenters, that NRC requirements sometimes intrude into the practice of medicine.

The Commission will carefully consider the staff proposal in light of public comments such as yours when it is received. The results of that consideration will then be available for additional public comment and discussion.

Sincerely,

Shirley Ann Jackson



Congress of the United States
House of Representatives

March 31, 1998

Ms. Shirley Ann Jackson
Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738


Dear Chairman Jackson:

I understand that the Nuclear Regulatory Commission is undergoing a process of revising its regulations to be more risk-based and performance oriented. The part of this process that is of concern to me involves revision of 10 CFR Part 35, which applies to the medical use of radioisotopes. While I support the direction in which the commission is moving, some of my constituents in the radiology community are concerned about the trend that is reflected in early drafts of the revisions of part 35 relating to the training and experience necessary to become licensed to use radioisotopes diagnostically.

The record of safe usage of radioisotopes compiled over many years under NRC licensure is a very good one. I and my constituents are concerned that -- with the severe reductions in required training and experience under 10 CFR Part 35.100, 200 and 300 that are being considered -- this record of safe usage will end and more incidents that jeopardize patient care will occur. I urge you, as leader of the Commission, to carefully consider the implications of the proposal that would best be served if the training and experience requirements were revised as recommended in comments submitted to the NRC staff by the American College of Radiology. It certainly would be unfortunate to move too far in a direction that jeopardizes patients in the name of a more forward looking regulatory process.

Thank you for your attention to this important matter. With best regards,

Sincerely,



Joel Hefley
Member of Congress

WASHINGTON OFFICE
2230 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4422

COLORADO SPRINGS OFFICE
104 SOUTH CAMDEN STREET 105
COLORADO SPRINGS, CO 80903
(719) 520-0055

FRONT WOOD OFFICE
6059 SOUTH QUEEN STREET 101
FRONT WOOD, CO 80111
(303) 843-0401

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LORETTA SANCHEZ

COMMITTEE ON
EDUCATION AND THE WORKFORCE

SUBCOMMITTEE
POST-SECONDARY EDUCATION,
OVERSIGHT AND INVESTIGATIONS

COMMITTEE ON NATIONAL SECURITY

SUBCOMMITTEE
MILITARY RESEARCH AND DEVELOPMENT



Congress of the United States
House of Representatives

April 2, 1998

Washington, DC 20515-0546

Dr. Shirley Ann Jackson, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Dear Chairman Jackson:


I understand that the Nuclear Regulatory Commission (NRC) is undergoing a process of revising its regulations to be more risk-based and performance oriented. The part of this process that is of concern to me involves revision of 10 CFR Part 35, which applies to the medical use of radioisotopes. While I support the direction in which the commission is moving, some of my constituents in the radiology community are concerned about the trend that is reflected in early drafts of the revisions of part 35 relating to the training and experience necessary to become licensed to use radioisotopes diagnostically.

The record of safe usage of radioisotopes compiled over many years under NRC Licensure is a very good one. I am concerned that, with the severe reductions in required training and experience under 10 CFR Part 35.100, 200 and 300 that are being considered, this record of safe usage will end and more incidents that jeopardize patient care will occur.

I urge you, as leader of the Commission, to consider carefully the implications of the proposal that the NRC staff is preparing for your approval. We believe that patient care would best be served if the training and experience requirements were revised and recommended in comments submitted to the NRC staff by the American College of Radiology (copy attached). It would be unfortunate to move too far in a direction that jeopardizes patients in the name of a more forward looking regulatory process.

Thank you for your attention to this matter. I look forward to hearing from you.

Very Truly Yours,


Loretta Sanchez
Member of Congress

PRINTED ON RECYCLED PAPER

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MQSA Reauthorization

ISSUE

The Mammography Quality Standards Act (MQSA) of 1992 will need to be reauthorized this year. The ACR supports reauthorization of this important law with amendments to enhance the quality for the early detection of breast cancer nationwide.

ACTION REQUESTED

Please ask your Representative and Senators to:

- **Support MQSA : authorization legislation that will enhance the quality and cost-effectiveness of this national standard for mammography facilities. The ACR believes that amendments to MQSA should include:**
 - ✦ **Demonstration projects to improve the quality, reduce duplication of effort, and advance the cost-effectiveness of mammography facility inspections.**
 - ✦ **Technical changes to preserve the integrity and quality of the clinical image review process.**
 - ✦ **Providing directly to every patient a summary of the radiologist's findings from the mammogram in terms easily understood by a lay person.**

BACKGROUND

Since enactment of the Mammography Quality Assurance Standards Act (MQSA) in 1992, women in the U.S. have gained confidence in the providers of their mammograms, through the knowledge that mammography facilities were being certified in accordance with federal standards. The successful collaboration of radiologists, mammography facility operators, and federal and state regulators, which was carefully designed into the law, has produced significant improvements in the quality of mammograms nationwide. The federal standards are built on the ACR Mammography Accreditation Program that was established in 1987.

Reauthorization of MQSA provides an opportunity to review the Act's progress to date, as well as the implications of the overall program. Issues raised during the initial implementation process, during the public comment period, and at public meetings of the National Mammography Quality Assurance Advisory Committee (NMQACC) reflect concerns that the inspection program has not been implemented in the most cost-effective way, taking into account past performance of facilities.

MQSA Reauthorization, page 2

To that end, it is recommended that FDA conduct demonstration projects that carefully examine the relationship between the duration and/or frequency of on-site inspections and the quality standards established in MQSA so that facilities are not subject to inefficient, duplicative or excessive oversight. The projects should examine the practices of facilities that demonstrate consistently high levels of performance on annual on-site inspections. In addition, two technical changes are recommended to strengthen the statute to assure the objectivity and quality of the review of clinical images. We believe that these modifications will help to preserve the integrity of the clinical image review process.

With regard to notification of mammography results, the Agency for Health Care Policy Research (AHCPR) strongly recommended that both women and their referring physicians be directly notified of the results of mammograms. Currently, under MQSA, results are sent directly to women who are not referred by a primary care physician (self-referral). However, an increasing number of mammography facilities have begun to report both normal and abnormal findings directly to the woman, as well as her referring physician. We recommend that all facilities be required to provide results in lay language directly to all women after mammography so long as relationships with referring physician are not disrupted.

PAT DANNER
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
COMMITTEE ON INTERNATIONAL
RELATIONS



Congress of the United States
House of Representatives
Washington, DC 20515-2506

March 31, 1998

Dr. Shirley Ann Jackson, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Dear Chairman Jackson:


I would like to take this opportunity to express to you my concerns with regard to the training and experience requirements to become licensed to use radioisotopes diagnostically.

As the Nuclear Regulatory Commission (NRC) is undergoing a process of revising its regulations to be more risk-based and performance oriented, the revision of 10 CFR Part 35 is becoming of great concern to several of my constituents. Members of the radiology community in my district are concerned about the trend that is reflected in early drafts of the revisions of part 35 relating to the training and experience necessary to become licensed to use radioisotopes diagnostically.

Specifically, my constituents are concerned that with the severe reductions in required training and experience under 10 CFR Part 35.100, 200 and 300 that are being considered, the record of safe usage experienced under the current NRC licensure requirements may end. I request that you give your utmost consideration to the possible implications of the proposal that the NRC staff is preparing for your approval and, in turn, give the same consideration to the training and experience requirements as revised and recommended in comments submitted to NRC staff by the American College of Radiology. It would be most unfortunate to adopt revisions that jeopardizes patient care in the name of a more forward looking regulatory process.

Thank you for giving my concerns your timely consideration. I look forward to hearing from you soon on this issue.

Best regards,



Pat Danner
Member of Congress

PD/aep

4804140027 1p.

Congress of the United States
House of Representatives

Washington, DC 20515-3604

March 31, 1998

Dr. Shirley Ann Jackson, Chairman
U. S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

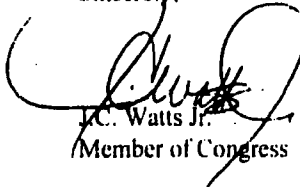
Dear Chairman Jackson:

I understand that the Nuclear Regulatory Commission (NRC) is revising its regulations to be more risk-based and performance oriented. Although I applaud this process, I am seriously concerned about revision of 10 CFR Part 35, which applies to medical use of radioisotopes. Early drafts for the revision of Part 35 relating to the training and experience necessary to become licensed to use radioisotopes diagnostically are strongly opposed by the experts from the medical radiology community, those with the greatest experience and knowledge in this area.

The NRC has an admirable record for overseeing the safe usage of radioisotopes. The severe reductions in required training and experience under 10 CFR Part 35.100, 200, and 300 that are being considered portends an end to this safe record, and most importantly increased risk to patient safety and well being. First, we must do no harm.

In the interest of optimum patient care, I urge you to strongly consider the training and experience recommendations submitted to your staff by the American College of Radiology. I would be unfortunate to move too far in the direction that jeopardizes patients in the name of a more forward looking regulatory progress. I look forward to your response on this issue.

Sincerely,



J.C. Watts Jr.
Member of Congress

JCW:twf

9804140023 1p.



Congress of the United States

House of Representatives

March 31, 1998

Dr. Shirley Ann Jackson
Chairwoman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Chairwoman Jackson:

I understand that the Nuclear Regulatory Commission (NRC) is undergoing a process of revising its regulations to be more risk-based and performance oriented. The part of this process that is of concern to me involves revisions of 10 CFR Part 35, which applies to the medical use of radioisotopes. While I support the direction in which the commission is moving, some of my constituents in the radiology community are concerned about the trend that is reflected in early drafts of the revisions of part 35 relating to the training and experience necessary to become licensed to use radioisotopes diagnostically.

The record of safe usage of radioisotopes compiled over many years under NRC Licensure is a very good one. I and my constituents are concerned that, with the severe reductions in required training and experience under 10 CFR Part 35, 100, 200 and 300 that are being considered, this record of safe usage will end and more incidents that jeopardize patient care will occur. I urge you, as leader of the Commission, to consider carefully the implications of the proposal that the NRC staff is preparing for your approval. We believe that patient care would best be served if the training and experience requirements were revised as recommended in comments submitted to the NRC staff by the American College of Radiology (copy enclosed). While I support the new direction in which the Commission is moving, I await your response to my concern for patient care in light of the proposed reductions in training and experience requirements for licensing workers in radiology.

If you have any questions please do not hesitate to call Selena Walsh of my staff at (202) 225-4065.

Sincerely,

Ed Pastor
Member of Congress

FP:sw
encl.: NRC revision,
MQSA reauthorization

9809130324 3 pp.

NRC Revision of 10 CFR Part 35

ISSUE

The NRC is in the process of revising Part 35 of the Code of Federal Regulations relating to the medical use of radioisotopes. The ACR is concerned about some of the changes being proposed for this revision. The ACR believes that some changes can be made to adjust the regulatory burden, but, as the representative of the largest component of the regulated community, we are concerned about the extent of the draft proposal.

ACTION REQUESTED

Please ask your Representative and Senators to:

- Send a letter to the Chair of the NRC (draft to be provided at the State Chapter Meeting) concerning the prospect that proposed changes in the NRC Medical Use Program proposal may jeopardize patient care and create a situation where incidents that are deleterious to patient care will begin to occur with greater frequency than occur today. The ACR comments on the draft supported the concept that some relaxation of the training and experience requirements might be appropriate. However, the comments expressed the view that shortening the Training and Experience requirements for the diagnostic use of radioisotopes beyond those recommended by the ACR may result in compromises in patient care (copy of ACR comments enclosed).

Background

The Nuclear Regulatory Commission (NRC) has been undertaking for the last four years a review of its Part 35 regulations covering the medical use of byproduct materials. This has included an internal NRC management review, an independent external review by the National Academy of Sciences' Institute of Medicine (IOM), and is part of the NRC's current "Strategic Assessment and Rebaselining Initiative." As a result of these studies, the NRC has concluded that it should restructure its Part 35 regulations to be "risk-informed and more performance-based."

More recently, the NRC released at the end of January a "strawman draft" to revise the Part 35 regulations. Although there are many changes in the draft from what currently exists in regulation, the College's comments primarily focused on proposed changes to the training and

experience requirements for non-American Board of Radiology (ABR) physicians who wish to become NRC authorized users of isotopes for medical purposes.

In brief, the NRC draft proffers substantial reductions in the training and experience requirements from the current regulations. It appears that the general intent of the NRC 'strawman' proposal is to separate the training and experience requirements necessary for radiation safety protection from those necessary for proper clinical performance.

The 'strawman' draft was reviewed at the March meeting of the NRC's Advisory Committee on the Medical Use of Isotopes (ACMUI). The ACR submitted written comments arguing against the major reductions proposed in the NRC draft. The College comments recommended retention of the status quo in the areas of most risk, i.e. sources used in oncology, and advocated a middle ground between the current requirement and the NRC draft in the 'lower risk' area. In addition, Dr. Frank Wilson, a radiation oncologist from the Medical College of Wisconsin, represented ACR at the ACMUI meeting and addressed issues related to radiation oncology. Dr. Larry Holder from Johns Hopkins University addressed the diagnostic nuclear medicine related issues.

The Committee accepted the status quo position in the areas of sources used in radiation oncology, and recommended to the NRC that they essentially retain the current requirements for use of those types of sources. The key argument seemed to be that, in the area of oncology, the hazards are so great from the sources used that it is impossible to separate radiation protection training from clinical training. However, the Committee did not make this same distinction in the diagnostic area. They accepted the NRC draft position for sources used in diagnostic nuclear medicine, and recommended that the NRC draft requirements of 40 hours of classroom training and 80 hours of experience be adopted as the NRC proposal.

The NRC staff is currently considering the advice of the ACMUI and will make recommendations to the NRC Commissioners at their scheduled May meeting. It is anticipated that a proposed rule to revise Part 35 will be published some time this summer. ACR will be actively monitoring the NRC's activities and will keep the radiology community apprised of the developments in any proposed revisions to the Part 35 regulations. Your help at this meeting, by contacting your elected representatives, will enhance the ACR's efforts to assure that this process does not compromise patient care.

JOSPH K. KNOLLENBERG

11TH DISTRICT, MICHIGAN

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15439 MIDDLEBELT
LIVONIA, MI 48154
734-425-7867

Dr. Shirley Ann Jackson
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Congress of the United States
House of Representatives
Washington, DC 20515-2211

April 3, 1998

COMMITTEE ON APPROPRIATIONS

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ENERGY AND WATER
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SUBCOMMITTEE
VICE CHAIRMAN
EMPLOYER-EMPLOYEE RELATIONS

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Paul F. Welday
CHIEF OF STAFF

Dear Chairman Jackson:

I understand that the Nuclear Regulatory Commission (NRC) is undergoing a process of revising its regulations to be more risk-based and performance-oriented. In particular, I am concerned about the revision of 10 CFR Part 35, which applies to the medical use of radioisotopes. I support the direction in which the commission is moving. However, some of my constituents in the radiology community are concerned about provisions in the early drafts of the revisions of part 35 relating to the training and experience necessary to become licensed to use radioisotopes diagnostically.

The record of safe use of radioisotopes compiled over many years under NRC licensure is a very good one. My constituents are concerned that, with the severe reductions in required training and experience being considered under 10 CFR Part 35.100, 200, and 300, this record of safe use will end and the incidents jeopardizing patient care will increase. I urge you, as leader of the Commission, to carefully consider the implications of this proposal. Training and experience requirements should be revised in a manner that best impacts patient care. It would be unfortunate to move too far in a direction that jeopardizes patients in the name of a more forward-looking regulatory process.

Thank you for taking the time to hear my thoughts. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Joe Knollenberg
Member of Congress

JKK:ab

PRINTED ON RECYCLED PAPER

9809130353 1p.

Congress of the United States

House of Representatives

Washington, DC 20515-3502

April 9, 1998

Dr. Shirley Ann Jackson
Chairman
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Dr. Jackson:

It has been brought to my attention by some of my constituents in the radiology community that the Nuclear Regulatory Commission is revising its regulations governing the medical use of radioisotopes.

I understand these revisions involve 10 CFR Part 35.100, 200 and 300. Specifically, my constituents are concerned that the early drafts of the revisions by the NRC staff would considerably reduce the training and experience requirements necessary to become licensed to use radioisotopes diagnostically. My constituents indicate that NRC's draft proposal raises safety concerns.

In accordance with all applicable laws and regulations, I would appreciate your advising me of the status of the NRC's proposal. I would also like to know how the NRC will ensure that patient safety (as well as that of the health care provider) is not compromised under this proposal.

Thank you for your attention to this matter.

Sincerely,

Rob
Rob Portman
Representative

RP/tm

9805130054 980430
PDR COMS NRCC
CORRESPONDENCE PDR

PAUL D. COVERDELL
GEORGIA

CONFERENCE SECRETARY

United States Senate

WASHINGTON, DC 20510-1004

CHAIRMAN
SUBCOMMITTEE ON CONSUMER PROTECTION AND
SAFETY

CHAIRMAN
MARKETING, INSPECTION AND
PROMOTION SUBCOMMITTEE
AGRICULTURE COMMITTEE

SMALL BUSINESS COMMITTEE

April 13, 1998

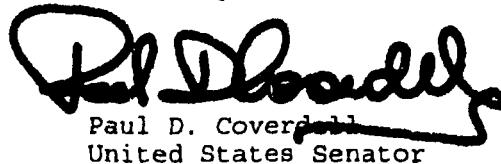
Mr. Dennis Rathbun
Director, Office of Congressional Affairs
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Rathbun:

A constituent of mine, Dr. Lee Martin, Jr., recently brought to my attention his concerns regarding the Nuclear Regulatory Commission's (NRC's) regulations governing the medical use of radioisotopes. I have attached a copy of a position paper detailing Dr. Martin's concerns.

While I understand the difficult decisions involved in the NRC's revision of its regulations, I hope that you will give appropriate consideration to Dr. Martin's concerns. Thank you in advance for your attention to this matter. If you have any questions, please feel free to contact Elizabeth Dallas of my staff at (202) 224-3778.

Sincerely,



Paul D. Coverdell
United States Senator

PDC/hed

9805130068 980430
PDR COMMS NRCC
CORRESPONDENCE PDR

NRC Revision of 10 CFR Part 35

ISSUE

The NRC is in the process of revising Part 35 of the Code of Federal Regulations relating to the medical use of radioisotopes. The ACR is concerned about some of the changes being proposed for this revision. The ACR believes that some changes can be made to adjust the regulatory burden, but, as the representative of the largest component of the regulated community, we are concerned about the extent of the draft proposal.

ACTION REQUESTED

Please ask your Representative and Senators to:

- Send a letter to the Chair of the NRC (draft to be provided at the State Chapter Meeting) concerning the prospect that proposed changes in the NRC Medical Use Program proposal may jeopardize patient care and create a situation where incidents that are deleterious to patient care will begin to occur with greater frequency than occur today. The ACR comments on the draft supported the concept that some relaxation of the training and experience requirements might be appropriate. However, the comments expressed the view that shortening the Training and Experience requirements for the diagnostic use of radioisotopes beyond those recommended by the ACR may result in compromises in patient care (copy of ACR comments enclosed).

Background

The Nuclear Regulatory Commission (NRC) has been undertaking for the last four years a review of its Part 35 regulations covering the medical use of byproduct materials. This has included an internal NRC management review, an independent external review by the National Academy of Sciences' Institute of Medicine (IOM), and is part of the NRC's current "Strategic Assessment and Rebaselining Initiative." As a result of these studies, the NRC has concluded that it should restructure its Part 35 regulations to be "risk-informed and more performance-based."

More recently, the NRC released at the end of January a "strawman draft" to revise the Part 35 regulations. Although there are many changes in the draft from what currently exists in regulation, the College's comments primarily focused on proposed changes to the training and

experience requirements for non-American Board of Radiology (ABR) physicians who wish to become NRC authorized users of isotopes for medical purposes.

In brief, the NRC draft proffers substantial reductions in the training and experience requirements from the current regulations. It appears that the general intent of the NRC 'strawman' proposal is to separate the training and experience requirements necessary for radiation safety protection from those necessary for proper clinical performance.

The 'strawman' draft was reviewed at the March meeting of the NRC's Advisory Committee on the Medical Use of Isotopes (ACMUI). The ACR submitted written comments arguing against the major reductions proposed in the NRC draft. The College comments recommended retention of the status quo in the areas of most risk, i.e. sources used in oncology, and advocated a middle ground between the current requirement and the NRC draft in the 'lower risk' area. In addition, Dr. Frank Wilson, a radiation oncologist from the Medical College of Wisconsin, represented ACR at the ACMUI meeting and addressed issues related to radiation oncology. Dr. Larry Holder from Johns Hopkins University addressed the diagnostic nuclear medicine related issues.

The Committee accepted the status quo position in the areas of sources used in radiation oncology, and recommended to the NRC that they essentially retain the current requirements for use of those types of sources. The key argument seemed to be that, in the area of oncology, the hazards are so great from the sources used that it is impossible to separate radiation protection training from clinical training. However, the Committee did not make this same distinction in the diagnostic area. They accepted the NRC draft position for sources used in diagnostic nuclear medicine, and recommended that the NRC draft requirements of 40 hours of classroom training and 80 hours of experience be adopted as the NRC proposal.

The NRC staff is currently considering the advice of the ACMUI and will make recommendations to the NRC Commissioners at their scheduled May meeting. It is anticipated that a proposed rule to revise Part 35 will be published some time this summer. ACR will be actively monitoring the NRC's activities and will keep the radiology community apprised of the developments in any proposed revisions to the Part 35 regulations. Your help at this meeting, by contacting your elected representatives, will enhance the ACR's efforts to assure that this process does not compromise patient care.

GEORGE R. NETHERCUTT, JR.
5th District, Washington

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SUBCOMMITTEES

AGRICULTURE

INTERIOR

NATIONAL SECURITY

COMMITTEE ON SCIENCE

SUBCOMMITTEES

SPACE AND AERONAUTICS

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george.nethercutt.puta@mail.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515-4705

April 14, 1998

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555 SOUTH MAIN STREET
COLVILLE, WA 99114
(509) 684-3481

Dr. Shirley Jackson
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Dear Chairman Jackson:

I understand that the Nuclear Regulatory Commission (NRC) is undergoing a process of revising its regulations to be more risk-based and performance-oriented. The part of this process that is of concern to me involves revision of 10 CFR Part 35, which applies to the medical use of radioisotopes. While I support the direction in which the commission is moving, some of my constituents in the radiology community take issue with the trend that is reflected in the early drafts of the revisions relating to the training and experience necessary to become licensed to use radioisotopes diagnostically. For example, the new proposal would require only 120 hours of training instead of the six months of training that is currently the standard.

The record of safe usage of radioisotopes compiled over the years under NRC Licensure is a very good one, but with the severe reductions in required training and experience that are being considered, this record of safe usage could end and more incidents that jeopardize patient care will occur. My constituents and I believe that patient care would best be served if the training and experience requirements were revised to at least three months and include other recommendations submitted by the American College of Radiology.

I urge you to consider carefully the implications of the proposal that the NRC staff is preparing for your approval. It would be unfortunate to move too far in a direction that puts patients at risk.

Best regards.

Cordially,

George R. Nethercutt, Jr.
GEORGE R. NETHERCUTT, JR.
Representative in Congress

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