

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

TITLE: Affirmation/Discussion and Vote

LOCATION: Rockville, Maryland

DATE: Thursday, May 10, 1990

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING

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AFFIRMATION/DISCUSSION AND VOTE

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Nuclear Regulatory Commission
1 White Flint North
Rockville, Maryland

Thursday, May 10, 1990

The Commission met in open session, pursuant to notice, at 11:30
a.m., James R. Curtiss, Acting Chairman, presiding.

COMMISSIONERS PRESENT:

THOMAS M. ROBERTS
KENNETH C. ROGERS
JAMES R. CURTISS
FORREST J. REMICK

STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

P-R-O-C-E-E-D-I-N-G-S

11:30 a.m.

ACTING CHAIRMAN CURTISS: We have one item to come before us this morning. We will ask the Secretary to walk us through. Do the Commissioners have any comments?

You may proceed, Sam.

MR. CHILK: The item before us, Mr. Chairman, is SECY-90-141, license fees, and it is a final rule. Here, the Commission is being asked to approve amendments that revise the schedule of license fees in 10 CFR Part 170. The amendments establish a ceiling of \$50,000 for topical report reviews; it updates the schedule of fees for small radioisotope programs; it changes the cost of professional staff hours; deletes certain provisions and clarifies others for ease of administration; it exempts Indian tribes and Indian organizations from the payment of fees; and requests that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with Department of Treasury cash management initiatives.

All the Commissioners have approved the rule changes with a small clarification from Chairman Carr. Would you please affirm your votes?

(Chorus of ayes.)

ACTING CHAIRMAN CURTISS: Any further business to come before us?

MR. CHILK: I have nothing further.

ACTING CHAIRMAN CURTISS: We stand adjourned.

(Whereupon, the above-entitled matter was adjourned at 11:35 o'clock a.m.)

CERTIFICATION OF REPORTER

This is to certify that the attached events of a meeting of the
United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation/Discussion and Vote

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Thursday, May 10, 1990

were transcribed by me. I further certify that said transcriptions is
accurate and complete to the best of my ability, and that the transcript
is a true and accurate record of the foregoing events.

A handwritten signature in cursive script, reading "Elizabeth Ann Tipton", written over a horizontal line.

Elizabeth Ann Tipton



RULEMAKING ISSUE

(Affirmation)

SECY-90-141

April 19, 1990

For:

The Commissioners

From:

James M. Taylor
Executive Director
for Operations

Subject:

LICENSE FEES - FINAL RULE

Purpose:

To obtain Commission approval of a Notice of Final Rulemaking that would revise the schedule of fees in Part 170.

Category:

This paper covers a major policy matter requiring Commission approval.

Background:

SECY-89-314, dated October 11, 1989, discussed the proposed rule on this subject. Following Commission approval, the proposed rule was published in the Federal Register on December 1, 1989 (54 FR 49736) in accordance with the provisions of the Independent Offices Appropriation Act of 1952 (IOAA) and established Administration policy on recovery of user charges. Three public meetings were held in Regions I, III, and IV to discuss the proposed changes and to answer any questions. A total of eleven industry and Agreement State representatives attended the three meetings. The public comment period expired January 30, 1990. The amendments would (1) establish a ceiling of \$50,000 for topical report reviews, (2) update the schedule of fees for small radioisotope programs, including the addition of a fee for byproduct material applications for decommissioning, (3) change the cost per professional staff hour for all full-cost fees from \$86 to \$92 per hour based on the FY 1990 budget, (4) delete certain exemption provisions and clarify others for ease of administration, (5) add a new exemption provision to provide that Indian tribes and Indian organizations will be

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Contact: H. Lee Hiller, OC
492-7351

exempt from payment of fees, and (6) request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives. This action more completely recovers costs incurred by the Commission in providing services to identifiable recipients and encourages the continued submittal of topical reports.

Discussion:

Twenty-nine public comments were received. They are addressed in detail in the draft final rule (Enclosure 1). The comments are summarized in Enclosure 2. Eighteen letters were from persons concerned with materials license fees (including five Agreement States) and eleven letters were from utility licensees and owners groups concerned about fees for Part 50 facilities.

The theme of the comments ranged from strong opposition to the increases proposed for all fees to the position that the Commission was not proposing sufficient fees to recover the costs of all effort necessary to protect the public health and safety. Many of the letters contained comments that were similar in nature. These comments have been grouped, as appropriate, and addressed as single issues. The staff has identified five areas of comment and the staff's response. Specific topics that the staff believes may be of interest to the Commission are discussed below:

1. The most frequent comment was that the proposed increases in fees were excessive, unjustified, and unfair to small businesses who would find it impossible to escalate prices on the percentage basis as intended by the proposed rule. On the other hand, several Agreement States were encouraged by and supported the proposed revision because it appears to strengthen the fee schedules for categories of licenses regulated by the Agreement States. One Agreement State in particular commented that the proposed rule does not go far enough and should seek to recover even more of the costs from materials licensees. In response to these comments, the staff points out that: (1) the IOAA requires an update of the license fees as necessary to recover the Commission's costs for processing applications and conducting inspections; (2) materials fees have not been adjusted since 1984 and the fees adopted then were based on FY 1981 data; and (3) the staff does not believe that the increase in fees that would result from the adoption of the schedule would result in a significant economic impact on most materials licensees. The increase in the annual cost that would be imposed on these licensees would not be significant in terms of their gross annual receipts.

2. Nine comments addressed the reestablishment of a fee ceiling for topical reports. Several supported the \$50,000 ceiling as an appropriate level while one commenter responded that no fees should be assessed but if a ceiling is reestablished, it should be at the previous rate of \$20,000. Two commenters suggested that the \$50,000 ceiling be made retroactive to January 30, 1989, the date that ceilings for topical reports were removed. They argued that this would be fair to those who submitted topical reports prior to that date with the expectation that they would know the exact cost of the NRC review, but after January 30, 1989, became subject to the full cost requirements with no ceiling limitation. Based on these comments, the staff is proposing to establish in this final rule a ceiling of \$50,000 for topical reports and as a matter of policy to exempt all costs for topical report reviews that exceed \$50,000 and were completed on or after January 30, 1989. The staff feels this is a fair and equitable way to handle applications that may have been subject to full cost review with no ceiling limitation.
3. Six comments were received on the proposal to require those bills in excess of \$5,000 to be paid by electronic fund transfer (EFT). One commenter endorsed the concept pointing out that he routinely uses EFT. Another commenter indicated that specific payment instructions should accompany the bill. Other commenters indicated that EFT is not justified. They pointed out that for many companies EFT is not a common practice, would require special action and expenditure of resources to accomplish and at times may not be desirable to use. In response to the comments, the staff feels that establishment of the \$5,000 requirement is justified and is consistent with U.S. Department of Treasury cash management initiatives and will encourage timely receipts and deposits of monies owed to the Federal Government.
4. Five commenters addressed the changes being proposed in the exemption provisions of § 170.11(a)(3), (a)(4) and (a)(11). The comments ranged from the suggestion of totally eliminating all fee exemptions in § 170.11 so that all materials licensees are treated equally from a fee standpoint, to one which indicated that exemptions are necessary and those suggested in the proposed rule are appropriate. In response to the comments, the staff recommends that the exemption provisions of § 170.11 be continued. The staff has made clarifying language changes to § 170.11(a)(4) and is proposing to establish a new exemption provision in § 170.11(a)(11) to provide that Indian tribes and

Indian organizations that are Federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from payment of license fees.

5. One commenter suggested that the initial \$150 application fee that is filed with an application subject to full costs in § 170.31 be eliminated. The license fee, he argues, adds an unnecessary administrative cost for initiating, processing and tracking the payment for the licensee as well as the NRC. The staff agrees and has made the necessary changes to § 170.31. The staff made a similar change to § 170.21 which became effective January 30, 1989.

Having considered all the public comments, including the questions raised at the public meetings, the staff recommends that a final rule be promulgated to revise the fee schedules in Part 170 based on the FY 1990 budget.

Coordination:

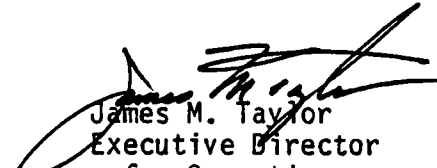
The Offices of Nuclear Material Safety and Safeguards, Nuclear Reactor Regulation, Governmental and Public Affairs, and Administration concur in the final rulemaking. The Office of the General Counsel has reviewed this final rulemaking and has no legal objections.

Recommendation:

That the Commission:

1. Approve for publication the amendments to 10 CFR Part 170 which would include the reestablishment of a fee ceiling for topical reports.
2. Certify that this final rule does not have a significant economic impact on a substantial number of small entities.
3. Note that:
 - a. The final rule would become effective 30 days after publication in the Federal Register.
 - b. The House Committee on Interior and Insular Affairs, the House Committee on Energy and Commerce, the Senate Committee on Environment and Public Works, and the Budget and Appropriations Committees will be notified by letter (see Enclosure 3).
 - c. A public announcement will be issued when the final rule is filed with the Office of the Federal Register for publication (see Enclosure 4).
 - d. The Federal Register notice will be mailed to all affected NRC licensees.

- e. 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.).
- f. Action required under this rule is administrative and will not impact the environment; therefore, neither an environmental impact statement nor an environmental assessment (10 CFR 51.22(c)(1)) has been prepared for this rule.
- g. The final rule is administrative and would assess fees for regulatory services provided by the NRC for nuclear power reactor licensees. The final rule does not impose any new, more stringent safety requirements on Part 50 licensees. Accordingly, the backfit rule in 10 CFR 50.109 does not apply to this rule.
- h. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification under the Regulatory Flexibility Act.
- i. Fees collected will be deposited with the U.S. Treasury. The collections do not augment the NRC appropriation.


James M. Taylor
Executive Director
for Operations

Enclosures:

- 1. Final Rule amending Part 170
- 2. List and Summary of Comments
- 3. Draft Congressional Letter
- 4. Draft Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Friday, May 4, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, April 27, 1990, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of May 7, 1990. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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Enclosure 1
[7590-01]

Nuclear Regulatory Commission
10 CFR Part 170
RIN: 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising its schedules of fees charged for licensing and regulatory services provided by the NRC. The revised schedule of fees will more completely recover NRC costs incurred in providing services to identifiable recipients, including both materials and facility applicants. The revision is based on the FY 1990 budgeted costs of providing services in accordance with the Commission's license fee guidelines and evaluation of public comments on the proposed rule. All applicants and licensees currently subject to fees under NRC regulations are affected by the rule.

EFFECTIVE DATE: [Insert a date 30 days following publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301 492-7351.

SUPPLEMENTARY INFORMATION:

- I Background
- II Responses to Comments
- III Changes Included In the Final Rule
- IV Section-by-Section Analysis

- V Environmental Impact: Categorical Exclusion
- VI Paperwork Reduction Act Statement
- VII Regulatory Analysis
- VIII Regulatory Flexibility Certification
- IX Backfit Analysis

I. Background

On December 1, 1989 (54 FR 49763-49771), the Commission published in the Federal Register a notice of proposed rulemaking for revisions to 10 CFR Part 170 ("Fees for Facilities and Materials Licenses and Other Regulatory Services***"). This action was necessary for the Commission to update the fee schedules in Part 170 to more completely recover costs incurred by the Commission in providing services to identifiable recipients and to encourage the continued submittal of topical reports.

The notice of proposed rulemaking invited interested persons to submit written comments for consideration in connection with the proposed amendments on or before January 30, 1990. In addition, the Commission's staff has been available to answer any questions concerning the proposed rulemaking. Three public meetings were held in Regions I, III, and IV to discuss the proposed changes and consider any questions. A total of eleven industry and Agreement State representatives attended the three meetings. The Commission placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L. Street NW., Washington, DC, in the lower level of the Gelman Building.

II. Responses to Comments

The Commission received twenty-nine (29) letters commenting on the proposed rule. Eighteen letters were from persons concerned with materials license fees (including five Agreement States) and eleven letters were from utility licensees and owners groups concerned with fees for Part 50 facilities. The comments fell into the following broad categories:

1. Increases in fees.
2. Reestablishment of topical report fee ceiling.
3. Payment of fees by electronic fund transfer (EFT).
4. Exemption provisions.
5. Other comments.

1. Increases In Fees.

Comment. Commenters' main concern is that the proposed increases were substantial and businesses would find it very difficult to escalate prices on a percentage basis as intended by the proposed rule. In several specific areas such as teletherapy and nuclear medicine (Categories 7A and 7C), manufacturing (Category 3B) and research and development (Category 3M) commenters were concerned not only about the proposed increases but why, in some instances, the proposed cost for an application for renewal would exceed the cost of a new application. Some commenters also indicated that inspection fees are too high because, in some instances, inspections take no more than one hour to perform.

Response. The Commission agrees that the proposed increases in many instances may be substantial. However, as was pointed out in the proposed rule, the last revision to the materials license fees in 10 CFR Part 170 was in 1984 and the fees in that schedule were based on FY 1981 data. In terms of cost data, ten years have elapsed since the schedules were revised. During that time, the professional licensing staff-hour rate increased from \$58 per hour to \$92 per hour, a 59% increase. The professional inspection staff-hour rate has increased from \$53 per hour to \$92 per hour, a 74% increase. One commenter who supported the proposed changes pointed out that the hourly rate increases have been on an average of 6 to 7 percent per year, barely keeping pace with inflation. In addition, there have been changes in the emphasis on some of the programs resulting in greater professional staff effort being expended for those particular categories of licenses. With respect to the question of why renewals require more time than new licenses for Category 3B, this type of license often has frequent amendments to add new products or to change existing descriptions of products or processes. The renewal process often requires a review of many documents to determine which descriptions are current and which have been superseded; a situation that does not occur with a new application. In addition, companies applying for new licenses will on the average operate simpler

programs using both smaller activities and varieties of radioisotopes than are utilized by the existing licensees.

License renewals in Category 7C require more time on the average than new applications because the average medical use licensee renewing a license is an institution offering a full variety of diagnostic services and often some therapy services. The average applicant for a new medical use license is a small clinic or private physician who is requesting authorization to perform one or a few medical procedures. Because of the total revision of 10 CFR Part 35 which became effective in 1987, new applicants and licensees renewing medical use licenses must submit complete applications and descriptions for all activities to be authorized. Thus the simplifications in the licensing process due to the Part 35 revision have helped reduce review time for the simpler programs being initiated more than for the existing programs with more activities to describe.

Some commenters, particularly Agreement States, support the revision in that it strengthens the fee schedules for categories of licenses regulated by Agreement States. The Commission will proceed in adjusting the fees in Part 170 because the Independent Offices Appropriation Act of 1952 (IOAA) requires that fees be updated as necessary to more fully recover the Commission's costs of processing applications and conducting inspections. With respect to inspections, the inspection fee covers more than just the time an inspector may spend on the premises conducting the inspection. As indicated in § 170.12(g) the inspection fee includes preparation time, time on site and documentation time as well as any associated contractual services costs but excludes the time involved in the processing and issuance of a notice of violation or civil penalty.

2. Reestablishment of a ceiling for topical report reviews.

Comment. Nine commenters addressed the reestablishment of a ceiling for topical reports. Several commenters supported the \$50,000 ceiling as an appropriate level for reestablishment. One suggested that if the ceiling were re-established it should be set at the previous rate of \$20,000. Most of the commenters in this area indicated that the public interest, as well as the interests of NRC and the industry, are better served by encouraging the submittal of topical reports. Two commenters suggested that the \$50,000 ceiling

be made retroactive to January 30, 1989, the date the ceilings for topical reports were removed.

Response. The Commission has reestablished the fee ceiling for the review of topical reports at \$50,000 and the review of any amendments, revisions, or supplements to topical reports at \$50,000. This figure represents an adjustment of a previous ceiling of \$20,000 to reflect the effects of inflation and is an amount which approximates the median of topical report fees over \$20,000 charged in 1989. As a matter of policy, the Commission will exempt all review costs that exceed \$50,000 for those topical report reviews completed on or after January 30, 1989. Thus, applicants for the review of topical reports or for amendments, revisions, or supplements to topical reports will be treated equally for those reports completed on or after January 30, 1989, because all will be subject to the \$50,000 fee ceiling.

3. Payment of fees by electronic fund transfer (EFT).

Comment. Six commenters addressed the proposal to require those bills in excess of \$5,000 to be paid by EFT. One commenter endorsed the concept pointing out that he routinely uses EFT. Another commenter indicated that specific payment instructions should accompany the bill. Other commenters indicated that EFT is not justified. They pointed out that for many companies EFT is not a common practice, would require special action by them as well as the expenditure of resources to accomplish, and at times, is not available or desirable to use.

Response. The Commission has established the \$5,000 requirement for EFT and will provide specific instructions on its use for those bills issued for more than \$5,000. This is consistent with U.S. Department of Treasury cash management initiatives and will encourage timely receipts and deposits of monies owed to the Federal Government.

4. Exemption Provisions.

Comment. Five commenters addressed the changes being proposed in the exemption provisions of § 170.11(a)(3), (a)(4) and (a)(11). The comments ranged from the suggestion of totally eliminating all fee exemptions so that

all materials licensees are treated equally from a fee standpoint to that of indicating that exemptions are necessary and those suggested in the proposed rule are appropriate. One commenter was concerned that exemptions shift a greater cost burden to those institutions/organizations that are not exempt. One commenter suggested that the language in § 170.11(a)(4) be clarified by using the wording in the Section-by-Section Analysis.

Response. The Commission will maintain the exemption provisions in § 170.11 and has made clarifying language changes to 10 CFR 170.11(a)(4) as suggested. The Commission will establish a new exemption provision in § 170.11(a)(11) to provide that Indian tribes and Indian organizations that are Federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from payment of fees. The exemption in § 170.11(a)(11) is modified so that the exemption does not cover licenses authorizing distribution of products or the offering of consultant services. This is consistent with the exemption provisions of § 170.11(a)(4) and (a)(9).

Establishing a new exemption does not shift a greater cost burden to those who pay fees. The amount of the fee assessed represents the average time to review a licensing action or to conduct an inspection for those licensees subject to fees as well as those exempt from fee payment. The costs for processing licensing actions or conducting inspections for exempt licensees are not recovered. There is no attempt to shift that cost to those who are paying fees.

5. Other Comments.

a. One commenter suggested the elimination of the initial \$150 application fee required in § 170.31 for those reviews based on full costs. He indicated that it adds an unnecessary administrative cost for initiating, processing and tracking the payment for the licensee as well as the NRC.

Response. The Commission agrees and has made the necessary changes to eliminate the \$150 filing fee in § 170.31. This is consistent with a similar change that was made with respect to filing fees in § 170.21 effective January 30, 1989.

b. Two commenters noted the inconsistency between 10 CFR 52.55 "Duration of Certification" which provides a 15 year validity of design certificates and § 170.12 Payment of Fees, Paragraph (e)(2)(ii)(C) and footnote 4 to § 170.21 which mandate a 10 year period over which review costs are recovered for designs not referenced in utility applications.

Response. The Commission agrees and Part 170 has been amended to correct this inconsistency.

c. One commenter suggested that the Commission assess fees for inspection of general licensees because these costs are not currently recovered. In addition, the commenter suggested that the Commission reduce the time available for reciprocity currently at 180 days. He indicated that this would place licensees in the NRC jurisdiction in a more competitive economic position with some Agreement State licensees who do not pay fees. At the present time, an Agreement State licensee who does not pay fees can operate for six months in a non-Agreement State in competition with the NRC licensee who has to pay fees.

Response. The Commission will continue its current policy of not assessing fees to NRC general licensees. In a majority of cases, general licensees are not required to file an application, do not receive specific approvals and are infrequently inspected. With respect to the reciprocity provision, the Commission recognizes that a difference exists between NRC and Agreement State length of reciprocity and whether or not fees are assessed. Although reciprocity is a matter of compatibility with respect to Agreement State regulations, the NRC has concentrated only on the radiation safety-related criteria for granting reciprocity and not the administrative functions such as length of time and whether or not a fee is required.

d. One commenter suggested that reasonable limits be established to prevent excessive routine inspections of small programs. The commenter felt that it is unacceptable to be charged an inspection fee any time an inspector chooses to visit a facility.

Response: Similar comments were received on the June 27, 1988, proposed rule (53 FR 24077). These comments were addressed in the final rule published

on December 29, 1988 (53 FR 52633). Effective January 30, 1989, the Commission removed the billing frequencies for routine inspections of small programs from § 170.31. The Commission indicated at that time that the routine inspection program is a structured program and that the frequency of inspections is not generally expected to be more frequent than that stipulated in the previous regulation.

e. One commenter requested that the Commission consider establishing a separate fee category for portable gauges and lower the inspection fee, and consider this action for gas chromatographs as well. A similar comment was received on the June 27, 1988, proposed rule that Part 170 be revised to create a new category for diagnostic devices. The commenter believes that doctors should be charged the same for medical use of an imaging scope as industrial users.

Response. Portable gauge and gas chromatograph licenses and licenses which authorize human use of diagnostic devices are grouped for fee purposes with other similar license types, such as fixed gauge licenses and other medical uses of byproduct, source or special nuclear material. The fees for these categories of licenses reflect the Commission's average cost to review applications and perform inspections of these programs. At this time, it is not practical to develop a separate category for each type of license or authorization or for each manufactured item. Establishing a separate fee category for portable gauges, gas chromatographs and diagnostic devices could have an adverse impact on licensees because they would be subject to multiple fee categories if their licenses include items other than portable gauges, gas chromatographs, or medical uses of byproduct, source or special nuclear material. The Commission realizes that in using the average-cost method instead of the full-cost method for determining license fees, variations will exist between licenses grouped within a single category. However, in developing the current fee categories, every effort was made to group licenses in the most logical and equitable manner. The Commission, therefore, has determined that the fees in this final rule are appropriate for portable gauge, gas chromatograph, and medical use type licenses.

f. One person commenting on the June 27, 1988, proposed revision to § 170.31 indicated that there was a disparity between the amount of the fee

charged for licenses authorizing calibration services and that charged for other types of licenses such as manufacturing and distribution licenses.

Response. Even though comments were received on the materials portion of the fee schedules in 10 CFR Part 170 which became effective January 30, 1989, the Commission made no changes to the fee schedule for small materials licenses indicating that adjustments would be made in 1990. Based on supporting information from the Office of Nuclear Material Safety and Safeguards, fee category 3N has been modified with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. This change was highlighted in the proposed rule (54 FR 49765).

III. Changes Included in the Final Rule

The changes included in the final rule are outlined below. Any differences between the final rule and the proposed rule are explained in the following discussion. Most of these changes were included in the proposed rule published on December 1, 1989 (54 FR 49763).

1. Amend § 170.20 to change the cost per professional staff-hour from \$86 per hour to \$92 per hour based on the FY 1990 budget. The \$92 per hour rate is a decrease from the proposed \$95 per hour. This decrease is a result of adjustments made by Congress to the FY 1990 budget. The method used for calculating the hourly rate is exactly the same as that used in the proposed rule. An analysis of the budget which generated this rate is provided in the Section-by-Section Analysis.

2. Establish in Part 170 a fee ceiling of \$50,000 for topical report reviews and for the review of any amendments, revisions or supplements to topical reports.

3. Update the schedule of fees in § 170.31 for small radioisotope licenses based on the FY 1990 budget. Because the professional staff-hour rate has decreased from \$95 to \$92, based on the FY 1990 budget, all fees shown in the proposed rule for small radioisotope licenses have been reduced in this final rule to reflect the decrease.

4. Remove the \$150 application filing fees in § 170.31 for those applications where fees are assessed based on the full cost for the review.

5. Modify fee Category 3N with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. Change Category 10B in § 170.31 from full cost fees to flat fees.

6. Delete the exemption provision in § 170.11(a)(3), broaden the exemption in § 170.11(a)(4), and clarify the exemption in § 170.11(a)(5).

7. Establish a new exemption provision in § 170.11(a)(11) to provide that Indian tribes and Indian organizations that are federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from payment of fees. The exemption is modified so that it does not cover licenses authorizing the distribution of products or the offering of consultant services.

8. Amend § 170.12(d) and (e) and footnote 4 to § 170.21 to clarify that fees for a standard design certification, if not referenced, will be recovered within fifteen years from the date of certification or renewal of the certification.

9. Revise § 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer.

The agency workpapers which support the final changes to 10 CFR Part 170 are available in the Public Document Room, at 2120 L Street, NW., Washington, DC in the lower level of the Gelman Building.

IV. Section-by-Section Analysis

The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to 10 CFR Part 170, Code of Federal Regulations.

Section 170.3 Definitions.

This section is revised to remove the paragraph designations for the definitions, arrange the definitions in alphabetical order, and add definitions of "Indian organization" and "Indian tribe."

"Indian organization" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

Section 170.11 Exemptions.

Paragraph (a)(3) is being removed in its entirety. Fees for any byproduct, source, or special nuclear materials licenses issued under 10 CFR Parts 30, 40, 70, or 71 that are considered to be incidental to the operation of a nuclear reactor will be charged under the respective materials fee category rather than under the 10 CFR Part 50 reactor fee category as has been past practice. Therefore, for special nuclear materials licenses or any other licenses which are required prior to operation of the reactor, e.g., startup sources, reactor fuel, or calibration or monitoring equipment, fees will be assessed under 10 CFR 170.31 rather than § 170.21. If an applicant possesses byproduct, source, or special nuclear material for decontamination, inspection, repair, modification, or testing of their reactor components, for which a license is required under the Commission's applicable materials regulations, fees will be assessed in accordance with 10 CFR 170.31.

Paragraph (a)(4) is changed to broaden the exemption for non-profit educational institutions to include certain activities (e.g., research) not covered by the current exemption. The Commission has received several exemption requests from colleges and universities for licensed activities not covered by the current exemption. Additionally, this change is in keeping with the concern of Congress regarding the impact of the current schedule on some entities and their limited ability to pass through the costs of these charges to the ultimate consumer. Although the legislative history for annual fees contained in Part 171 of this chapter discusses the option of considering modifications to these fee schedules for hospitals, research and medical institutions and uranium producers, the Commission is continuing to limit this particular exemption to non-profit educational institutions.

The exemption has been clarified to indicate that it does not include power reactor licenses and materials licenses which authorize human use, commercial

distribution, remunerated service to other persons, or activities performed under a Government contract. The Commission will continue to assess fees for these kinds of activities. For example, fees are charged for licenses which authorize use of strontium 90 eye applicators in the treatment of eye diseases and xenon 133 for blood flow pulmonary functions; distribution of in vitro kits and radiopharmaceuticals; service for a charge to other persons or licensees such as soil density measurements and installation, calibration, and leak testing of equipment containing radioactive material and use of licensed material for consulting services. On the other hand, if a non-profit educational institution provides these or similar services to other persons without charge, the exemption would still apply.

Paragraph (a)(5) is changed, for clarification, to include certificates of compliance and other approvals.

Paragraph (a)(11) is added to provide that Indian tribes and Indian organizations that are Federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from license fees. Indian tribes are recognized as separate political entities similar to State governments. The Commission intends to exempt Indian tribes and wholly owned tribal commercial organizations conducting licensed activities on tribal lands from license fees in the same manner as it does States and governmental agencies. The exemption is modified, consistent with § 170.11(a)(4) and (a)(9), so that the exemption does not cover licenses authorizing the distribution of products or the offering of consultant services.

Section 170.12 Payment of Fees.

As indicated in the proposed rule, paragraphs (a), (b), (c), and (d) are revised to more clearly distinguish the fee payment requirements for materials licenses and approvals not subject to full cost from the requirements for other licensed activities that are subject to full cost. In addition, paragraphs (d) and (e) are being revised to change the 10 year period of cost recovery to a 15 year period to be consistent with § 52.55. This is consistent with the intent of the Commission as stated in the final 10 CFR Part 52 rule (54 FR 15376) that an applicant for design certification does not have to pay an application fee, but the applicant will have to pay the full cost of the NRC review of the application, although not until the certification is referenced in an application for a construction permit or combined license or, failing that, not until the

certification expires. Also paragraphs (e) and (f) are being revised to eliminate the \$150 application fee for those applications where fees are determined based on full cost.

Paragraph (h) is being revised to indicate that (1) payments may also be made by electronic fund transfer (EFT) and (2) that where specific instructions regarding payment are provided on the bills, payment should be made accordingly. It is the intent of the Commission to request payment by electronic fund transfer of those bills which are in excess of \$5,000. This change is being made to encourage timely receipts and deposits in accordance with U.S. Department of the Treasury cash management initiatives.

Section 170.20 Average Cost Per Professional Staff-Hour.

This section is modified to reflect an agency-wide professional staff-hour rate based on FY 1990 costs to the Agency. Accordingly, the professional staff rate for the NRC for FY 1990 for all fee categories that are based on full cost is \$92 per hour, or \$161.4 thousand per FTE (professional staff year). For FY 1990, the budgeted obligations by direct program are: (1) Salaries and Benefits, \$203.16 million; (2) Administrative Support, \$74.64 million; (3) Travel, \$12.27 million, and (4) Program Support, \$148.70 million. In FY 1990, 1,636 FTEs are considered to be in direct support of NRC programs applicable to fees (see Table I). Of the total 3,180 FTEs, 1,544 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of these 1,544 FTEs, a total of 286 FTEs and the resulting \$26.1 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

Table I - Allocation of direct FTEs by Office

Office	Number of direct FTEs ¹
NRR.....	1,007.5
RESEARCH.....	146.0
NMSS.....	317.3
AEOD.....	85.0
ASLAP/ASLBP.....	22.2
ACRS.....	25.0
OGC.....	33.0
Total Direct FTE.....	1,636.0

¹Regional employees are counted in the office of the program each supports

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific license or class of licenses) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All direct FTEs are identified by office.
2. NRC plans, budgets, and controls on the following four major categories (see Table II):
 - (a) Salaries and Benefits.
 - (b) Administrative Support.
 - (c) Travel.
 - (d) Program Support.
3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.
4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the December 1, 1989, proposed rule (54 FR 49763) and the FY 1990 budget, and excluding budgeted Program Support obligations, the remaining \$263.97 million allocated uniformly to the direct FTEs (1,636) results in a calculation of \$161.4 thousand per FTE for FY 1990 (an hourly rate of \$92).

Table II - FY 1990 Budget by Major Category
[\$ in Millions]

Salaries and benefits.....	\$203.16
Administrative support.....	74.64
Travel.....	<u>12.27</u>
Total nonprogram support obligations.....	290.07
Program support.....	148.70
Total budget.....	<u>\$438.77</u>

The Direct FTE Productive Hourly Rate (\$92/hour rounded down to the nearest whole dollar) is calculated by dividing the annual nonprogram support cost (\$290.07 million) less the amount applicable to exempted functions (26.1 million) by the product of the direct FTE (1,636 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects and Inspections.

Since the Commission decision to remove the fee ceiling for topical report reviews (53 FR 52633; December 29, 1988) and as discussed in the proposed rule published December 1, 1989, the number of topical reports submitted for review has significantly decreased. It appears that the principal reason for the reduction in topical reports being submitted is the uncertain and potentially unlimited fee for NRC review of these reports. This is counterproductive to the agency because, in many cases, the regulatory effort gains significant benefit in terms of (1) the resolution of safety significant problems, and (2) the staff time saved by conducting a generic review of a topical item thereby saving extensive plant-by-plant review in the same or similar areas. Examples of beneficial topical initiatives are numerous. The recent B&W Owners Group decision to undertake a complete reassessment of all B&W reactor designs, thus eliminating a costly NRC review, saved time and produced a more complete technical review than could have been accomplished by NRC alone. Another example is the CE Owner's Group development of EP Guidelines for all of its units. This generic effort saves NRC costly review time assessing plant-by-plant guidelines. These are just two of many examples where the public interest is served by an industry undertaking to resolve an issue. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource savings to the NRC, as well as the overall high level of technical competence available from industry, justifies NRC encouragement of industry submittal of these reports.

In conclusion, a balance must be maintained between the need to encourage industry submittal of these reports and the need to assess fees for the costs of reviewing the reports. The current system of charging a fee with no ceiling for NRC review of these reports appears to have had an inhibiting effect on the

industry. As a result, the Commission is amending 10 CFR 170.21, Category J, Special Projects, to provide that the maximum fee for review of a topical report shall not exceed \$50,000 and any amendments, revisions, or supplements to topical reports shall not exceed \$50,000. This figure represents an adjustment of a previous ceiling of \$20,000 to reflect the effects of inflation and is an amount which approximates the median of topical report fees over \$20,000 charged in 1989. The Commission, as a matter of policy, will exempt all costs exceeding \$50,000 for topical report reviews completed on or after January 30, 1989.

The professional hourly rate assessed for the services provided under the schedule is revised as shown in § 170.20. Footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984 and January 30, 1989, rules, as appropriate. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1990 rates shown in this final rule. Footnote 4 of § 170.21 is revised to clarify that the period for payment of fees for standard design certifications is extended from 10 to 15 years. Footnote 5 has been added to § 170.21 to indicate that \$50,000 is the maximum amount that may be assessed for each topical report or each amendment, revision and supplement to a topical report.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services.

The licensing and inspection fees in this section are modified to reflect the FY 1990 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. It includes the addition of a category for decommissioning applications for byproduct material. The fees shown in this final rule will apply to those decommissioning applications that are currently pending NRC review as well as subsequently filed applications.

Fee categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13, and 14 are revised to delete the \$150 initial application fee. Fees for these categories are based on the full cost (professional staff hours and any contractual services costs) to conduct the licensing review. Because licensees are billed for these costs and are required to pay invoices within a specified time, this will eliminate

the administrative cost related to initiating, processing and tracking the \$150 payment for the licensee as well as the NRC.

Fee Category 3N is modified with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P.

Fee Category 10B is changed from full-cost to flat fees. This change is based on an analysis of the actual staff-hours expended for the review and approval of the Part 71 quality assurance programs.

Fee Category 12, Special Projects, is revised to provide that the maximum fee for review of a topical report and any amendments, revisions or supplements to topical reports shall not exceed \$50,000. This is consistent with the change made to § 170.21, Category J.

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 this final rule.

VI. Paperwork Reduction Act Statement

This 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

This 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. These guidelines 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. 336 (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 Independent Offices Appropriation Act

of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. National Cable Television Association v. Federal Communications Commission, 554 F. 2d 1094 (1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (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, when the U.S. Court of Appeals for the Fifth Circuit held in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (1979, cert. denied 44 U.S. 1102 (1980)), that (1) the Nuclear Regulatory Commission 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 in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (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.

The NRC does not believe that the increase in fees that would result from the adoption of this rule would result in significant economic impact on most materials licensees. The increase in the annual cost that would be imposed on these licensees would not be significant in terms of their gross annual receipts. This rule revision will not have significant impact on state and local governments and geographical regions or on health, safety and the environment. The foregoing discussion constitutes the regulatory analysis for the final rule.

VIII. Regulatory Flexibility Certification

In the notice of proposed rulemaking published on December 1, 1989 (54 FR 49736), the Commission determined in its Regulatory Flexibility Certification that, based upon the available information, this rule was not expected to have a significant economic impact upon a substantial number of small entities as

defined by the Small Business Act or the Small Business Administration regulations issued pursuant to the Act (13 CFR Part 121). The Commission did, however, invite any licensee who considered itself to be a small entity to provide additional information by responding to four general questions on how the regulation could be modified to take into account the differing needs of small entities. In keeping with its normal practice, the Commission mailed the proposed rule document to each of its more than 8,000 licensees. Also, the Commission held public meetings in three regions to discuss the proposed rule.

The Commission received 29 comments on the proposed rule, representing less than one-half percent of all NRC licensees. Of the 29 comments, none mentioned the Regulatory Flexibility issue directly although several commenters expressed concern over the substantial increases in the fees assessed for specific categories of licenses.

A total of seven comments are believed to have come from small entities based upon a review of information contained in their comments. Two of these comments were from hospitals, one from an industrial radiographer, one from a well logger, one from an engineering consultant, and two from other small research and development and manufacturing licensees. Although several of these commenters expressed concern over the percentage rate of increase in the fees which would be assessed for certain categories of licenses, these commenters neither indicated that the increased fees would significantly affect their ability to do business nor provided the NRC with the information needed for NRC to make that determination. The fees assessed by the NRC for each category of license are intended to reflect the level of effort required by the NRC to conduct the necessary licensing and inspection actions for that category. To this extent, the NRC has attempted to "tier" the costs imposed on its licensees to the level of effort that is required for the NRC to ensure that licensed activities are conducted in a manner that adequately protects public health and safety.

Based upon the number of comments received on the proposed rule and comments from attendees at the public meetings, as well as an analysis of these comments, the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The increase in the annual cost imposed on most of these licensees is not significant in terms of their gross annual receipts. There is no annual recordkeeping burden imposed by the final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for it because these amendments do not require the modification of or addition 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 in 10 CFR Part 170

Byproduct material, 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, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 170.

PART 170--FEES FOR FACILITIES AND MATERIALS 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, 88 Stat. 1242, as amended (41 U.S.C. 5841).

2. In § 170.3, remove the paragraph designations for the definitions, arrange the definitions in alphabetical order, and add definitions of "Indian organization" and "Indian tribe" to read as follows:

§ 170.3 Definitions.

* * * * *

"Indian organization" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Secretary of the Interior because of their status as Indians.

* * * * *

3. In § 170.11, paragraph (a)(3) is removed and reserved; paragraphs (a)(4) and (a)(5) are revised and paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a)* * *

(3) [Reserved]

(4) A construction permit or license applied for by, or issued to, a non-profit 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) remunerated 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; and (iv) activities performed under a Government agency contract.

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except for a utilization facility designed to produce electrical or heat energy pursuant to Section 103 or 104b of the Atomic Energy Act of 1954, as amended.

* * * * *

(11) A license for possession and use of byproduct material, source material, or special nuclear material or other approval applied for by or issued to an Indian tribe or an Indian organization conducting licensed activities on tribal lands, except for licenses which authorize distribution of byproduct material, source material, or special nuclear material, or products containing byproduct material, source material, or special nuclear material, or licenses authorizing services to any person other than an Indian tribe or an Indian organization.

* * * * *

4. In § 170.12, paragraphs (a), (b), (c), (d), (e), (f), and (h) 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. Applications subject to fees for which no remittance is received will not be processed and may be returned to the applicant. All application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

(b) License fees. (1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Except as provided in paragraph (b)(3) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each.

(3) For early site reviews issued under 10 CFR Part 52, there is no application fee. Fees for the review of an application for an early site permit are deferred as follows: The permit holder shall pay the applicable fees for the permit at the time an application for a construction permit or combined license referencing the early site permit is filed. If, at the end of the initial 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. Each bill will identify the applications and costs related to each.

(c) Amendment fees and other required approvals. (1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by

the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed, except for amendment and other approvals for early site permits which will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) Renewal fees. (1) Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except as noted in paragraphs (d)(3) and (d)(4) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Fees for review of an application for renewal of a standard design certification shall be deferred 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 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 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 review of the application for renewal, or remainder of those costs, at that time.

(4) Fees for the review of an application for renewal of an early site permit shall 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.

(e) Approval fees.

(1) Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed. Fees for those applications subject to full cost reviews are payable upon notification by the Commission. Each applicant will be billed at six month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(2)(i) There is no application fee for standardized design approvals or certifications issued under 10 CFR Part 52. The full cost of review for a standardized design approval or certification 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 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)(A) In the case of a design which has been approved but not certified and for which no application for certification is pending, if the design is not referenced, or if all costs are not recovered, within five years after the date of the preliminary design approval (PDA) or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time;

(B) 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 costs, at that time.

(C) 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.

(f) Special Project Fees. Fees for applications for special projects such as topical reports are based on full cost of the reviews and are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

* * * * *

(h) Method of payment. Fee payments shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Where specific payment instructions are provided on the bills to applicants or licensees, payment should be made accordingly, e.g., bills of \$5,000 or more will normally indicate payment by electronic fund transfer.

5. 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 approvals and inspections under §§ 170.21 and 170.31 which are based upon the full costs for the review or inspection will be calculated using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff-hour rate for the NRC for FY 1990 is \$92 per hour.

6. In § 170.21, Category J. Special Projects and Footnotes 2 and 4 to the schedule are revised and Footnote 5 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

* * * * *

J. Special projects

Approvals:

- | | |
|---|-----------|
| 1. Topical reports ⁵ | \$50,000 |
| 2. Amendments, revisions and supplements to topical reports ⁵ | \$50,000 |
| 3. All other approvals, special projects, reports and amendments except those specified in 1 and 2 above..... | Full Cost |

* * * * *

²Full 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 this rule will be determined at the professional rates established for the June 20, 1984, and January 30, 1989, rule revisions, as appropriate. For those applications currently on file for which review costs have reached the applicable fee ceiling established by the June 20, 1984, rule, 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, to the effective date of this rule will not be billed to the applicant. For topical reports, and amendments, revisions, and supplements to topical reports, the amount shown is the maximum that may be assessed for each report or each amendment, revision and supplement. In no event will the total review costs be less than \$150.

* * * * *

⁴Collection of the review costs for a preliminary design approval (PDA) and final design approval (FDA) are deferred, respectively, for a period of

five years from the approval; except that, if the design is referenced during that period, 20 percent of the total costs will be payable by the holder of the design approval or certificate as each reference is made until the full costs are paid. If the design is certified, the five-year deferral period is extended to 15 years from the certification, with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the full costs are not recovered by the end of the applicable deferral period, the holder of the design approval or certificate must pay the remainder of any costs not previously recovered by the NRC. Applications for amendments to PDAs, FDAs and certifications are subject to full costs and will be billed upon completion of the review.

⁵The amount shown represents the maximum amount that may be assessed for each topical report or each amendment, revision, and supplement to a topical report.

7. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services including inspections.

Applicants for materials licenses and other regulatory services and holders of materials 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:

License, Renewal, Amendment	Full Cost
Inspections:	
Routine	Full Cost
Nonroutine	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:	
Routine	Full Cost
Nonroutine	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	\$ 400
Renewal	\$ 400
Amendment	\$ 300
Inspections:	
Routine	\$ 370
Nonroutine	\$1,100

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	\$ 550
Renewal	\$ 550
Amendment	\$ 180
Inspections:	
Routine	\$ 550
Nonroutine	\$ 640

2. Source material:

- A. 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:	
Routine	Full Cost
Nonroutine	Full Cost

- B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):

Application - New license	\$ 90
Renewal	\$ 90
Amendment	\$ 90
Inspections:	
Routine	\$ 230
Nonroutine	\$ 280

C. All other source material licenses:

Application - New license	\$ 630
Renewal	\$ 600
Amendment	\$ 360
Inspections:	
Routine	\$ 640
Nonroutine	\$1,200

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	\$1,800
Renewal	\$1,100
Amendment	\$ 180
Inspections: ⁵	
Routine	\$1,700
Nonroutine	\$1,700

- 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	\$1,000
Renewal	\$1,800
Amendment	\$ 440
Inspections:5	
Routine	\$ 830
Nonroutine	\$1,600

- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 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	\$2,700
Renewal	\$1,100
Amendment	\$ 370
Inspections:	
Routine	\$1,100
Nonroutine	\$1,500

- D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 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	\$ 900
Renewal	\$ 400
Amendment	\$ 250
Inspections:	
Routine	\$ 640
Nonroutine	\$ 920

- 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	\$ 400
Renewal	\$ 380
Amendment	\$ 200
Inspections:	
Routine	\$ 370
Nonroutine	\$ 550

- 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:

Application - New license	\$ 920
Renewal	\$ 320
Amendment	\$ 280
Inspections:	
Routine	\$ 460
Nonroutine	\$1,000

- 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:

Application - New license	\$3,700
Renewal	\$1,500
Amendment	\$ 370
Inspections:	
Routine	\$ 830
Nonroutine	\$1,100

- 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:

Application - New license	\$1,700
Renewal	\$ 850
Amendment	\$ 200
Inspections:	
Routine	\$ 550
Nonroutine	\$ 550

- 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	\$2,100
Renewal	\$ 960
Amendment	\$ 280
Inspections:	
Routine	\$ 370
Nonroutine	\$ 550

- 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	\$2,000
Renewal	\$ 460
Amendment	\$ 310
Inspections:	
Routine	\$ 550
Nonroutine	\$ 550

- 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	\$1,500
Renewal	\$ 750
Amendment	\$ 230
Inspections:	
Routine	\$ 550
Nonroutine	\$ 550

- 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	\$1,800
Renewal	\$1,600
Amendment	\$ 400
Inspections:	
Routine	\$ 740
Nonroutine	\$ 920

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	\$ 900
Renewal	\$ 900
Amendment	\$ 500
Inspections:	
Routine	\$ 640
Nonroutine	\$ 740

N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only 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	\$1,100
Renewal	\$ 640
Amendment	\$ 320
Inspections:	
Routine	\$ 550
Nonroutine	\$ 550

0. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:

Application - New license	\$2,400
Renewal	\$1,400
Amendment	\$ 390
Inspections: ⁵	
Routine	\$ 920
Nonroutine	\$2,000

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

Application - New license	\$ 400
Renewal	\$ 400
Amendment	\$ 300
Inspections:	
Routine	\$ 920
Nonroutine	\$ 920

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 commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:

License, renewal, amendment	Full Cost
Inspections:	
Routine	Full Cost
Nonroutine	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	\$2,200
Renewal	\$1,500
Amendment	\$ 160
Inspections:	
Routine	\$1,700
Nonroutine	\$1,300

- 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:

Application - New license	\$1,500
Renewal	\$ 740
Amendment	\$ 180
Inspections:	
Routine	\$1,300
Nonroutine	\$1,700

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	\$2,700
Renewal	\$1,600
Amendment	\$ 430
Inspections:	
Routine	\$ 640
Nonroutine	\$ 640

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

License, renewal, amendment	Full Cost
Inspections:	
Routine	\$ 550
Nonroutine	\$ 830

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	\$1,100
Renewal	\$1,100
Amendment	\$ 280
Inspections:	
Routine	\$ 920
Nonroutine	\$1,500

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:

Application - New license	\$2,700
Renewal	\$ 630
Amendment	\$ 340
Inspections:	
Routine	\$ 920
Nonroutine	\$1,500

- 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:

Application - New license	\$1,800
Renewal	\$1,600
Amendment	\$ 290
Inspections:	
Routine	\$1,300
Nonroutine	\$1,400

- 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	\$ 570
Renewal	\$ 830
Amendment	\$ 340
Inspections:	
Routine	\$ 830
Nonroutine	\$1,200

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	\$ 460
Renewal	\$ 320
Amendment	\$ 250
Inspections:	
Routine	\$ 550
Nonroutine	\$ 550

9. Device, product or sealed source safety evaluation:

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

Application - each device	\$2,600
Amendment - each device	\$ 920
Inspections	None

- B. Safety evaluation of devices or products con-
taining 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	\$1,300
Amendment - each device	\$ 460
Inspections	None

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

Application - each source	\$ 550
Amendment - each source	\$ 180
Inspections	None

- 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	\$ 280
Amendment - each source	\$ 90
Inspections	None

10. Transportation of radioactive material:

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

Approval, Renewal, Amendment	Full Cost
Inspections	None

B. Evaluation of Part 71 quality assurance programs:

Application - Approval	\$ 180
Renewal	\$ 180
Amendment	\$ 180
Inspections	None

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment	Full Cost
Inspections	None

12. Special projects:

Approval:

1. Topical reports ⁶	\$50,000
2. Amendments, revisions and supplements to topical reports ⁶	\$50,000
3. All other approvals (including trans- portation route approvals), special projects, reports and amendments except those specified in 1 and 2 above	Full Cost
Inspections	None

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:

Routine	Full Cost
Nonroutine	Full Cost

C. Inspections related to storage of spent fuel
under § 72.210 of Part 72 of this chapter:

Routine	Full Cost
Nonroutine	Full Cost

14. Byproduct, source or special nuclear material licenses
and other approvals authorizing decommissioning, decon-
tamination, reclamation or site restoration activities
pursuant to 10 CFR Parts 30, 40, 70 and 72:

Approval, Renewal, Amendment	Full Cost
Inspection:	
Routine	Full Cost
Nonroutine	Full Cost

¹Types of fees - Separate charges as shown in the schedule will be assessed for 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 inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals or applications to reinstate expired licenses and approvals not subject to fees assessed at full cost must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) License/approval fees - Fees for applications for new licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 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 for renewal of materials 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, 2A, 4A, 5B, 10A, 11, 12, 13A and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) Amendment fees - Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license 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, 2A, 4A, 5B, 10A, 11, 12, 13A and 14) amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

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.

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.

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fee.

(e) Inspection fees - Separate charges will be assessed for each routine and nonroutine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection. 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 of this part, to which any applicable contractual support service costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes. -

²Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such 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.

³Full 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 this rule will be determined at the professional rates established for the

June 20, 1984, and January 30, 1989, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, rule, 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, to the effective date of this rule will not be billed to the applicant. In no event will the total review costs be less than \$150.

⁴Licensees paying fees under Categories 1A and 1B 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.

⁵For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

⁶The amount shown represents the maximum amount that may be assessed for each topical report or each amendment, revision, and supplement to a topical report.

Dated at Rockville, Maryland, this ____th day of ____ 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

List and Summary of Comments

Broken Down By The Following Categories

Group 1 Materials Licensees

Group 2 State Agencies

Group 3 Reactor Facilities

GROUP 1

List of Materials License

Commenters and Summary of the Comments

Advanced Nuclear Fuels Corporation

Allentown Hospital

American Airlines

Chem-Nuclear Systems, Inc

Collette, Bradley

Computalog Wireline Services, Inc.

Derse & Schroeder Associates, Ltd.

General Electric Nuclear Fuels

Kirk, William

Sam-son Inspection & Technical Services, Inc.

Seiler Instrument & Manufacturing Co., Inc.

South Jersey Hospital System

Transnuclear, Inc.

MATERIALS COMMENTS

1. C. W. Malody, Manager, Regulatory Compliance

Advanced Nuclear Fuels Corporation

Strongly supports the reimposition of a fee ceiling of \$50,000 for topical report reviews. Believes an open-ended fee discourages submittal of topical reports and thereby inhibits the development of U.S. fuel and reactor technology. The development of better technology provides increased understanding of fuel and reactor design and performance. This enables the industry and the NRC to better identify and focus resources on the issues that are potential safety concerns. The reimposition of the ceiling should encourage more generic reviews of topical items by the NRC which will allow a more efficient use of NRC resources. The proposed ceiling of \$50,000 for topical reports is appropriate.

Endorses the use of electronic fund transfers for payment of fees in excess of \$5,000.

2. Kenneth M. Baab, Vice President

Allentown Hospital - Lehigh Valley Hospital Center

Objects to some of the fee changes particularly the licensing fees for teletherapy where the renewal fee has increased from \$350 to \$630 and the amendment fee has more than doubled from \$120 to \$340. Also questions the large differential between routine inspections (\$920) and non-routine inspections (\$1,500) for teletherapy licenses. With respect to other categories authorizing human use of byproduct material (Category 7C), questions why the renewal fee (\$830) is higher than the initial application fee (\$570) for a new license and why the nonroutine inspection fee is so high at \$1,200 compared to the routine inspection fee of \$830.

Strongly recommends reconsideration of the high fees, particularly for non-profit licensees who provide services for the good of the public.

3. A. A. Hale, Vice President, Engineering

American Airlines Maintenance & Engineering Center

Some reasonable limits must be established to prevent excessive inspections in the area of radiography. Under the current regulations, a licensee can be charged for any number of routine inspections in a given year. The previous regulations allowed only one routine inspection of radiography operations per year. American Airlines received two routine inspections during 1989--one in February and a second in August. At the first inspection, two inspectors from Region IV spent approximately one hour on the premises for which American Airlines was billed \$530.

Feels it is unacceptable to be charged an inspection fee anytime an inspector chooses to visit the facility. Some restraints must be established.

4. Michael T. Ryan, Executive Director, Regulatory Affairs

Chem-Nuclear Systems, Inc.

It would be prudent for the Commission to eliminate review fees for waste form topical reports thereby encouraging their submittal. This would permit the Commission to gain the collective base of information and experience about waste processing programs from waste processing vendors and service companies.

Agrees that a cost ceiling for topical report reviews is necessary if the Commission continues to assess topical report fees and continues the waste form process. However, \$50,000 per topical report is too much and certainly \$50,000 for amendments, revisions and supplements is exorbitant. The previous ceiling of \$20,000 should be reestablished with Commission wide requirements on what is acceptable as one topical report. The footnotes in 10 CFR 170.21 should be changed to state that review fees will be determined based on the

fee schedule at the time the topical report is submitted. In this way, Chem - Nuclear would not be financially burdened because of long review times and schedules, NRC staff preferences for topical report scope and subdivision or changing requirements during the review process.

Another area of concern is the review fees for cask topical reports. Again, review fees should be capped at \$20,000 per topical report and the fees determined based on the fee schedule in effect at the time the application is filed.

5. Bradley Collette RTNM

As a citizen of the U.S. with Indian heritage, does not support the proposed exemption in § 170.11(a)(11) that Indian tribes and Indian organizations be exempt from payment of fees. Concerned that such an exemption will shift a greater cost burden on those institutions/organizations that are not exempt. If services are being provided by the NRC to any organization, then fees should be assessed to that organization for reimbursement of those services.

6. Jeff D. Meekins, Safety Manager

Computalog Wireline Services, Inc.

The proposed license and inspection fee increases should be dropped concerning the well logging industry. The current license and inspection fees are adequate. The proposed fee increases place a hardship on smaller wireline service companies and cannot be passed on to the customer which is the oilfield service industry, a competitive bid market. Fee increases by NRC will likely trigger fee increases by the Agreement States.

Public meetings held by the NRC to discuss fees should be announced at least 30 days in advance and notice should be sent specifically to the Radiation Safety Officer of each company.

7. Richard Lechnir, Radiation Protection Officer

Derse & Schroeder Associates, Ltd.

The proposed amendment fee increase of 333% for Category 3M (Research and Development) seems quite high. To charge \$520 to simply add or subtract the name of a supervisory person to a license appears to be exorbitant.

8. T. Preston Winslow, Manager, Licensing & Nuclear Materials Management

General Electric Nuclear Fuels and Components Manufacturing

Requests that application fees in the less than \$500 range be eliminated. Specifically, the \$150 application fee which is required to be filed for those cases based on full cost does not appear to serve any useful purpose and adds an unnecessary administrative cost for initiating, processing and tracking to both the NRC and the licensee. Licensees are required to pay invoices within a specified time frame with specifically stated penalties for those who do not comply. Suggests the word "contained" be deleted in Category 1A, 10 CFR 170.31 because it is confusing to state that uranium 235 is "contained" in an "unsealed form."

9. William F. Kirk, Engineering Consultant

It is ludicrous to require bill payment in excess of \$5,000 by wire transfer when NRC cannot promptly bill for the required fees. For many companies, wire transfer is not the practice and requires special actions and expenditure of personnel hours; licensees should be able to bill the NRC for this special service, should it be requested.

The professional staff yearly salary is excessive particularly when it is based on only 1744 hours from 2080 available.

10. S. M. Hopkins, Corporate Radiation Safety Officer

Sam-son Inspection & Technical Services, Inc.

Requests that the proposed revisions be rescinded because the proposed increases are unfair to small business entities since in private industry it is impossible to escalate prices for goods and/or services on a percentage basis as intended in the proposed rate changes. The increases far surpass any indices, Federal, local or otherwise that we are aware of.

11. Andrew G. Leahy, Radiation Safety Officer

Seiler Instrument & Manufacturing Co., Inc.

The amount of the proposed increases particularly Category 3B (Manufacturing) is alarming. The proposed increases would drastically affect our bids since we are a small business concern mainly involved with competitive bidding of fixed price contracts with the Department of Defense. If the increases become effective, the competitiveness of individual bids would be adversely affected and our competitive pricing to the Department of Defense would have to be adjusted to absorb the increased cost.

Questions why an application for renewal for category 3B would cost \$800 more than a new license application.

12. Thomas J. Lonergan, Executive Vice President

South Jersey Hospital System

The proposed increases for small radioisotope programs for human use of byproduct material are excessive and unjustified. The proposed renewal and amendment fees for Category 7C (Doctors/Hospitals) appear excessive compared to staff effort likely to be required in the review of most license renewal and amendment applications. Have difficulty comprehending that 46% more effort is needed to review a license renewal application than for a new license application. Would seem more reasonable for a license renewal fee to be less than or comparable to the

new application fee. In view of the limited budgets at most medical institutions, concerned that the proposed 192% increase in license amendment fees may discourage licensees from making program changes to improve safety. Commission should reconsider the unreasonably high fee structure it proposes to implement.

13. Bill R. Teer, Senior Vice President

Transnuclear, Inc.

Supports completely the re-establishment of a fee ceiling for the review of topical reports. To assure equity for all organizations which have or will be submitting topical reports, proposes that the new \$50,000 ceiling be made retroactive to January 30, 1989, the date that ceilings were removed. This would be fair to those who submitted topical reports prior to that date with the expectations that they would know the exact cost of the NRC review, but were then required to pay full costs.

GROUP 2

State Agencies Comments

Alabama - Department of Public Health

Arkansas - Department of Public Health

Illinois - Department of Nuclear Safety

Iowa - Bureau of Radiological Health

Kansas - Department of Health and Environment

State Agency Comments

1. Aubrey V. Godwin, Director Division of Radiation Control

State of Alabama-Department of Public Health

Suggests that the Commission amend its regulations to recover the cost of inspecting general licensees. Points out that amending the regulations would not require that general licensees be inspected but as problems arise such as that with static eliminators, both the NRC and the Agreement States could recover part of its costs for inspecting these licensees.

Suggests the time available for reciprocity (180 days) be reduced. This would place the licensees in the NRC jurisdiction in a more competitive economic position with Agreement State licensees. At the present time, an Agreement State licensee who may not be paying a fee for his license can operate six months in competition with the NRC licensee who has to pay both a license and inspection fee.

2. Greta J. Dicus, Director, Division of Radiation Control and Emergency Management

Arkansas Department of Health

Supports the proposed revision since it appears to strengthen the fee schedule for a large number of licensees and for the categories of licensees regulated by the Agreement States. All users of radioactive materials should share the costs of ensuring that these materials are used correctly and that the public health and safety and the environment are protected.

Exemptions to fees are necessary and those suggested in the proposed rule appear to be appropriate. Cautions that any proposed exemption continue to be carefully

considered. Concurs that the exemption proposed in § 170.11(a)(4) be limited to non-profit educational institutions.

3. Terry R. Lash, Director, Illinois Department of Nuclear Safety

State of Illinois

Encourages and supports the NRC's proposal to increase the revenues collected from its licensees that use radioactive materials. Proposal is long overdue. However, proposed fees do not go far enough because the new structure does not appear to recover 45% of the NRC's costs as required by law. Believes that NRC should adopt a fee structure and propose regular increases that will assure full cost recovery within a few years.

NRC's proposed fee might result in about a 64% increase in revenues based on the increase in professional hourly charges from \$58 to \$95. Assuming the proposed rule becomes effective in 1990, the 64% increase is an annual average increase of 6.4% (FY1981-1990) barely keeping pace with inflation. Such an increase will result in recovery of only about 30% of costs for those materials licenses that are similar to those regulated by Illinois. This is still well below the 45% recovery rate specified by Congress.

Section VI of the December 1, 1989, proposed notice states that the proposed rule will not have a significant economic impact on state and local governments. Submits that the proposed rule does have a significant impact on Illinois. NRC's current policies and procedures for establishing license fees set undesirable precedents. The failure to recover even the Congressionally mandated amount on an equitable basis makes it more difficult for states like Illinois to attempt to recover larger portions of its costs from licensees. To the extent that NRC shifts its fees to reactor licensees, Illinois citizens bear a disproportionate share of these costs because of the relatively large number of reactor licenses in the state.

Have commented previously that the NRC proposals do not conform to the provisions of COBRA in that charges are to be "reasonably related to the regulatory services provided by the Commission and shall fairly reflect the cost to the Commission

of providing such services." Illinois does not believe the proposed rule meets that test.

NRC's general statement of policy published on June 4, 1987, establishes a criterion for funding of Agreement Statement Programs. It states in part that "Principal operating funds should be from sources which provide continuity and reliability, i.e. general tax, license fees, etc." A sound license fee system is important in meeting that criterion and actions by the NRC which impede this objective are undesirable. Urges Commission to reconsider its proposed rule with the aim of substantially increasing the materials license fees in order to obtain the Congressionally mandated 45% of costs in the short term and then revising them annually until full cost recovery is achieved within a few years.

4. Bruce W. Hokel, Supervisor, Radioactive Materials Program
Donald A. Flater, Chief, Bureau of Radiological Health

State of Iowa

Commission should strongly consider eliminating the fee exemption policy so that all possessors of radioactive material are treated equally. Those licensees currently fee exempt such as governmental entities should not be treated any different from a private facility regarding assessment of fees. Have determined that 25 percent of potential fees is lost due to exemption policy.

The routine inspection fee (\$950) for portable gauges is too high. Even the current fee of \$530 is high. These inspections take no more than one hour to perform and for a small operator this is totally unreasonable. The NRC should consider establishing a separate fee category for portable gauges and lower the fee to \$200. Another license category that may deserve this consideration is gas chromatographs since the inspection time is also very short in comparison to other types of licenses.

5. Gerald W. Allen, Public Health Physicist

State of Kansas

Agrees that the proposed fees will not likely have a direct impact on the Kansas program since their fee system is based on a different calculation method.

Points out that by assessing fees for decommissioning activities involving radioactive material (proposed Category 14) on a full cost basis, it is difficult to compare the NRC fee with that assessed by Kansas or other states. NRC should indicate what items of cost are used to determine the full cost fee.

GROUP 3

List of Reactor Facility Licenses and Licensee Representatives
and Summary of Comments

BWR Owners Group
Combustion Engineering
Combustion Engineering Owners Group
Duke Power Company
Gulf States Utilities Company
Northeast Utilities
Nuclear Management and Resources Council
Omaha Public Power District
Philadelphia Electric Company
Portland General Electric Company
University of Wisconsin

Reactor Facilities

1. Stephen D. Floyd, Chairman

BWR Owners' Group

Endorses the proposed change establishing a ceiling of \$50,000 for topical report reviews. Establishing a ceiling on the cost of the NRC review will encourage the owners group to continue initiating activities with plant specific benefits. The proposed ceiling places a reasonable limit on the cost of reviewing these activities and knowing the cost in advance enables the owners group to more effectively plan allocation of its resources.

2. A. E. Scherer, Director Nuclear Licensing

Combustion Engineering Company

Favors the proposed ceiling for topical report review fees and recommends its adoption. Continues to believe that there is benefit to the public and the NRC in avoiding unnecessary repetitive, plant-specific reviews whenever possible.

Notes that to be consistent with Part 52, footnote 4 to § 170.21 needs revision to indicate a deferral period of 15 years for a certified design.

3. Edward C. Sterling, Chairman

Combustion Engineering Owners Group

Strongly favors the proposed revisions to 10 CFR Part 170, especially reestablishing a ceiling for topical report reviews and agrees that this action will encourage the submittal of topical reports. Has long believed that the NRC and the public benefit when NRC reviews generic reports. Points out that since early 1989, the absence of a review fee ceiling has hampered the submittal of

topical reports. Based on pending requests for exemption to various topical report fees, owners group believes that the proposed revisions to Part 170 should include provisions to retroactively apply the review fee ceiling to the beginning of 1989.

4. Hal B. Tucker

Duke Power Company

Feels that the Commission should not limit the means of payment to electronic funds transfer only. At times, electronic funds transfer is not available or desired to be used.

5. J. E. Booker, Manager, River Bend Nuclear Group

Gulf States Utilities Company

Concurs with the proposed rule with the exception of the amendment requesting that bills in excess of \$5,000 be paid by electronic fund transfer. Feels that electronic transfers are not justified for sums less than \$100,000. The rule should be revised to specify payment by electronic fund transfer for bills in excess of \$100,000.

6. E. J. Mroczka, Senior Vice President

Northeast Utilities

On behalf of Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company agrees that proposed fee ceiling on topical reports establishes an equitable balance between the need to encourage submittal of reports and the need to assess fees for reviewing them. The efficiency associated with topical reports for both the industry and the NRC is appropriately reflected in the establishment of the ceiling.

Notes that most direct impact of proposed rule on Part 50 licensees would be the increase in cost per NRC professional staff hour from \$86 to \$95. However,

because NRC will recover 45 percent of its budget through Part 170 and Part 171 fees regardless of the specific hourly rate assigned, this increase should not significantly affect the Part 50 licensees' total fee obligation. In fact, to the extent the proposed revision will increase the fee responsibility of materials licensees under Part 170, licensees under Part 50 should notice a slight downward adjustment with respect to their Part 171 fee obligation.

Connecticut Yankee and Northeast Nuclear routinely utilize the electronic fund transfer payment method and endorse this aspect of the proposed revision.

7. Joe F. Colvin, Executive Vice President and Chief Operating Officer

Nuclear Management and Resources Council

Fully supports the NRC's proposed revisions. Believes that the public interest and the interests of the NRC and the industry, are better served by encouraging the submittal of topical reports. The NRC's proposal to reimpose a fee ceiling for review of topical reports removes the uncertainty and potentially unlimited cost associated with the review of these reports. The action should achieve the goal of encouraging the submittal of future topical reports.

Also supports the adoption of the method that the NRC intends to use to calculate the cost per professional staff hour. However, the FY 1990 rate of \$95 is 10.5 percent higher than the rate for FY 89 of \$86. Since this increase is twice the rate of inflation, the Commission should reconsider this increase and provide the basis for the change. Suggests publication of the annual revisions to this rate, if any, prior to the beginning of each fiscal year. This will enable licensees to use the rate information to budget for licensing support and other regulatory activities involving NRC staff time.

Requests that § 170.12, 2(ii)(c) be amended to correct the inconsistency that exists with 10 CFR 52.55 which provides a 15 year validity of design certifications.

8. K. J. Morris, Division Manager, Nuclear Operations

Omaha Public Power District

Each invoice in excess of \$5,000 that is to be paid by electronic fund transfer should be accompanied by specific payment instructions. This will allow for the proper disbursement of OPPD's license fees and assure that OPPD will be in compliance with the code.

9. G. A. Hunger, Jr., Director, Licensing Section

Philadelphia Electric Company

Agrees with the proposed revisions, endorses the NRC's efforts and supports promulgation of a final rule. Fully supports the Nuclear Management Resources Council (NUMARC) positions and comments regarding the proposed rule.

10. David W. Cockfield, Vice President Nuclear

Portland General Electric Company

Suggests that the impact on licensees of removal of the exemption in § 170.11(a)(3) be clarified. Has determined that exemption removal will not affect PGE's current operating license for Trojan reactor nor would it require any new fee payments.

11. R. J. Cashwell, Reactor Director

University of Wisconsin

The proposed wording of the rule in § 170.11(a)(4) is difficult to comprehend. Part III of the Section-by-Section Analysis contains much clearer wording. A possible interpretation of the proposed change is that sponsored research at a university research reactor would result in a loss of exemption from licensing fees. Further, it also appears possible to interpret that any radiation treatment fees at a research reactor would result in loss of exemption.

The Honorable John B. Breaux, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On December 1, 1989, the Commission published proposed changes to 10 CFR Part 170 of the Commission's fee regulations in the Federal Register.

By letter dated November 29, 1989, we informed you of the issuance of the proposed rule indicating that the amendments would (1) establish a ceiling of \$50,000 for topical report reviews, (2) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs including the addition of a fee for by-product material applications for decommissioning, (3) amend 10 CFR 170.20 to change the cost per professional staff-hour from \$86 based on the FY 1989 budget to \$95 per hour based on the FY 1990 budget, (4) delete exemption provisions in 10 CFR 170.11(a)(3) and clarify (a)(4) and (a)(5) for ease of administration in collecting fees, (5) add a new exemption provision in 10 CFR 170.11(a)(11) to provide that Indian tribes and Indian organizations will be exempt from payment of fees, and (6) revise 10 CFR 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives.

Enclosed is a copy of the final rulemaking for 10 CFR Part 170 that has been published in the Federal Register with an effective date 30 days from publication. This final rulemaking is being issued basically as proposed on December 1, 1989, except for (1) a downward adjustment to the professional staff

hour rate in 10 CFR 170.20 (from \$95 to \$92 per hour) based on changes made by Congress in the Commission's FY 1990 budget and (2) based on public comment, the \$150 application fee in 10 CFR 170.31 is being eliminated for these applications where fees are assessed based on the full cost of the review.

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and Public Affairs

Enclosure:
Final Revision to 10 CFR 170

cc: The Honorable Alan K. Simpson

NOTE TO SECRETARY:
Identical letters to:

The Honorable Morris K. Udall (with cc to Representative James V. Hansen)
The Honorable Philip R. Sharp (with cc to Representative Carlos J. Moorehead)
The Honorable Tom Bevill (with cc to Representative John T. Myers)
The Honorable J. Bennett Johnston (with cc to Senator Mark O. Hatfield)

CONCURRENCE:

JHolloway	RFonner	LHiller	RScroggins	EDO	DRathbun
OC	OGC	OC	OC		GPA

DISTRIBUTION: (w/o encls.)

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CA	RFonner, OGC
EDO	

NRC AMENDS REGULATIONS
TO REVISE LICENSING AND INSPECTION FEES

The Nuclear Regulatory Commission is amending its regulations to increase licensing and inspection fees and establishing a ceiling on fees for certain special reviews. The new fees will allow the Commission to more equitably recover the costs incurred in providing licensing and inspection services for licensed activities.

The amendments increase the fees for licensees using radioactive materials under Parts 30, 40 and 70 of the Commission's regulations and add a fee for reviewing applications for decommissioning by certain materials licensees. The amendments are based on Fiscal Years 1987 and 1988 licensing data, and on a change in the cost per NRC professional staff hour to \$92, based on the agency's Fiscal Year 1990 budget. Indian tribes and Indian organizations are made exempt from the payment of fees, as States and government agencies currently are.

The NRC fee changes for special reviews establish a fee ceiling of \$50,000 for the review of topical reports. (The NRC Topical Report Program provides a procedure by which industry organizations may, on their own initiative or at NRC's request, submit reports on specific "important-to-safety" subjects to the NRC and have them reviewed independently of any construction permit or operating license review. The purpose of the program is to minimize the time and effort required of both industry and the NRC on subjects repeated in numerous licensing actions. The procedure provides for a single review and approval with subsequent referencing, rather than repetitive reviews for the same item.) Currently fees

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for review of topical reports have no ceiling, but are based on full cost recovery.

NRC charges fees in proportion to its costs for providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fees are authorized by the Independent Offices Appropriation Act of 1952; they are deposited into the General Treasury of the United States and do not augment the NRC appropriation.

The amendments will be effective on _____ (30 days after publication in the Federal Register on _____).

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