

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**Title: BRIEFING ON PROPOSED CHANGES TO NRC
FEE RULE - PUBLIC MEETING**

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 BRIEFING ON PROPOSED CHANGES TO NRC FEE RULE

5 ***

6 PUBLIC MEETING

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8
9 U.S. Nuclear Regulatory Commission
10 One White Flint North
11 Rockville, Maryland
12

13 Wednesday, March 15, 1995
14

15 The Commission met in open session, pursuant to
16 notice, at 2:00 p.m., Ivan Selin, Chairman, presiding.
17

18 COMMISSIONERS PRESENT:

19 IVAN SELIN, Chairman of the Commission
20 KENNETH C. ROGERS, Commissioner
21 E. GAIL de PLANQUE, Commissioner
22
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1 STAFF SEATED AT THE COMMISSION TABLE:

2 JOHN C. HOYLE, Secretary of the Commission

3 KAREN CYR, General Counsel

4 JAMES TAYLOR, Executive Director for Operations

5 RONALD SCROGGINS, Deputy Chief Financial

6 Officer/Controller

7 JESSE FUNCHES, Deputy Controller

8 C. JAMES HOLLOWAY, JR., Special Assistant for Fee

9 Policy & Rules, OC

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P R O C E E D I N G S

[2:00 p.m.]

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

We're here to discuss the proposed 1995 license fee rule. As we all know by now, the NRC is required by the Omnibus Budget Reconciliation Act of 1990, or OBRA '90, to recover approximately 100 percent of our budget either from the Nuclear Waste Fund or from our licensees. This has been really a very difficult problem for us. First of all, not all direct beneficiaries of NRC activities pay fees. Second, the fees tend to be based more on the costs that we incur in performing the services and not on any perceived perception of the benefits received. Third, there has been rather large variations of fees in the past for reasons that are not obvious to the beneficiaries.

So, a lot of issues have arisen. We've tried to discuss having some legislation that would exempt certain categories of fees for which the people who are paying the -- that produce services that are not of benefit to the people who are paying these fees, but Congress has not been amenable to changes in the fee legislation. So, not being unusually stubborn and hitting our head against the wall for a couple of years, we've gone back to see what we could do within our own statutory authority and that is the subject

1 of the briefing today.

2 So, without going into a great deal about what
3 we'll be doing, we look forward to the presentation.

4 Mr. Taylor?

5 MR. TAYLOR: Good afternoon.

6 With me at the table are Jim Holloway, Jesse
7 Funches and Ron Scroggins from the Office of the Controller.

8 Mr. Chairman, you mentioned the Act that required
9 us to collect fees. This is our fifth year of implementing
10 the Act. We continue to meet the requirements of the Act in
11 that we're collecting approximately 98 percent of the budget
12 each year through fees since the law went into effect. You
13 also mentioned our submission of potential legislation.
14 That legislation came about as a result of our examination
15 of fees in accordance with the Energy Policy Act of 1992.

16 I'm on slide 1, please.

17 [Slide.]

18 MR. TAYLOR: We did evaluate the situation. We
19 got over 500 public comments in in response to that Act and
20 we provided a report to the Congress as required by that Act
21 in 1992, including recommended legislation. That was not
22 passed.

23 Given the fact that this legislation was not
24 enacted, we asked the staff to examine options within the
25 existing fee laws to determine whether we can make our fees

1 more equitable and more predictable. You'll hear today the
2 lines of actions that we're taking, but in summary on slide
3 1 --

4 Did they get that up yet?

5 MR. FUNCHES: May I have slide 1, please?

6 [Slide.]

7 MR. TAYLOR: We are doing things which are helping
8 in the fee area. One is due to efficiencies and various
9 actions taken within the staff. We've reduced our budget
10 authority over the past couple of years. We are, as you'll
11 hear today, taking steps to make fees more equitable across
12 the board. And importantly, we're also doing some things
13 that will increase the predictability of fees for licensees,
14 that is predictability of year to year changes. We are
15 continuing our actions to reduce the impact of fees on small
16 businesses.

17 With those opening thoughts, I'll now ask Jesse
18 Funches to continue with more details of what we're doing.

19 MR. FUNCHES: May I have chart 2, please?

20 [Slide.]

21 MR. FUNCHES: This chart shows the amount of the
22 NRC budget to be recovered from fees for the last three
23 years. As you can see, it shows a decreasing trend. This
24 decreasing trend reflects an important aspect of making fees
25 fair and equitable. That is to control NRC cost. As a

1 result of prudent financial management, our budget has been
2 reduced.

3 For example, in fiscal year 1994 we proposed a
4 \$12.7 million recision which was enacted by Congress. In
5 fiscal year 1995, we identified \$20 million in reductions
6 through a budget amendment. Those reductions were
7 subsequently adopted by Congress and included in our
8 appropriations. As a result of this reduction in fiscal
9 year 1995, we are collecting a reduced amount of \$504
10 million after we exclude the \$22 million appropriated from
11 the Nuclear Waste Fund. As this chart shows, this is \$9
12 million less than the amount we had to recover last year and
13 \$15 million less than the amount we had to recover in fiscal
14 year 1993.

15 We are continuing our effort to keep costs down
16 for future years. For example, our fiscal year 1996 request
17 to Congress is at about the same level as the '95 amount.

18 Next chart, please.

19 [Slide.]

20 MR. FUNCHES: As Mr. Taylor has mentioned, the
21 \$504 million that we went for recovery in fiscal year '95
22 include activities that we identified in our fee policy
23 report as causing fairness and equity concerns. These
24 concerns result because the current fee statute limited
25 assessment of annual fees to NRC licensees, yet we're

1 required to recover 100 percent of the budget. We're
2 required to perform some activities that are not related to
3 NRC licensees, but yet we must recover them. For example,
4 international activities that support both U.S. foreign
5 policy and over all U.S. defense are included in our budget.
6 We also perform oversight of the Agreement State Program
7 where we delegate authority to the Agreement States where it
8 regulates their licensees.

9 CHAIRMAN SELIN: Terminate our authority in the
10 states and they're picked up by the Agreement States.

11 MR. FUNCHES: Right.

12 The other area that caused fairness and equity
13 concern result from NRC licensees paying for regulatory
14 activities that benefit both NRC licensees and others. That
15 is, not all direct beneficiaries to NRC licensees. I mean
16 NRC's activities pay fees. This can result from statutory
17 or policy exemptions, for example federal agency exempted
18 from Part 170 licensing and inspection fees. And in
19 response to the Regulatory Flexibility Act, we have set
20 maximum annual fees for small entities to reduce the impact
21 of these fees on them.

22 Additionally, there are regulatory activities that
23 are applicable to NRC licensees that pay fees and other
24 organizations that do not. A major concern in this area is
25 the regulatory program for the material license. The

1 generic part of this program support both NRC licensees and
2 Agreement State licensees, yet only licensees in states
3 regulated by NRC pay fees to cover these costs.

4 Another broad area that's another example is what
5 I would like to term "regulatory liability created by past
6 licensees." A prime example of this is the Site
7 Decommissioning Management Program. We are charging Part
8 170 license fees where we can, however there are costs that
9 cannot be recovered under Part 170. The totality of all of
10 these activities are about 11 percent of the NRC's budget.
11 In fiscal year 1995, in the rule that we just published, it
12 equates to about \$56 million.

13 If the legislation suggested in last year's fee
14 policy report had been enacted, this \$56 million would not
15 need to be recovered. However, this has not happened. So,
16 we looked at actions that would help mitigate the fairness
17 and equity concern resulting from this \$56 million.

18 What I'd like to do now is talk about the actions
19 that we are taking to address the concerns.

20 What we did first was to examine whether we could
21 make fees fairer by recovering some of these costs through
22 means other than fees through licensees. We did find some
23 activities that were not part of our statutory mission and
24 therefore could be performed under a cost reimbursement
25 agreement with organization receiving the benefits. By

1 performing these activities under a cost reimbursement
2 agreement, the cost can be deleted from the budget and
3 therefore not have to be recovered through fees.

4 This reimbursable concept was approved by the
5 Commission on January 23rd, 1995 and we are currently
6 implementing the concept by planning to enter into
7 reimbursable agreement for the review of DOE/DOD military
8 projects. We have so informed the Department of Energy
9 about this proposal. We are also planning to provide direct
10 support to Agreement States such as training, travel and
11 technical support through reimbursable agreements and we
12 have informed the states of that. These two activities we
13 were planning to implement beginning in fiscal year 1997 to
14 give them time to plan to enter into reimbursable
15 agreements.

16 We are also this year avoiding the use of
17 appropriated funds by proposing to support the review of
18 NASA's space launch mission, the Casini Mission, under
19 reimbursable.

20 Once we had determined what we could delete from
21 the budget, the next question was can we distribute these
22 costs in a more fair and equitable way. Currently, we use
23 various methods for them. The power reactors now pay 100
24 percent of all international and non-profits. On the other
25 hand, the material licensees pay 100 percent of generic

1 activity to support both licensees and states regulated by
2 NRC and in Agreement States. In a very few cases, the cost
3 of the activities are included in an hourly rate.

4 As we indicated earlier, these costs are not
5 related to NRC licensees or provide support to more than NRC
6 licensees. Rather than having one licensee or a class of
7 licensees bearing the high cost of a particular activity, we
8 believe it's more equitable to treat these costs similar to
9 the way you would treat overhead and allocate the \$56
10 million to the broadest base possible. That is, what we are
11 proposing to do is to allocate these costs to all licensees
12 so they pay an amount that is proportionate to the direct
13 budget for the class of licensees.

14 For example, instead of acting power reactors pay
15 100 percent of the international cost and non-profit
16 educational, all licensees will share in the payment of
17 these costs in proportion to their budget. Likewise,
18 instead of putting 100 percent of the costs of regulatory
19 support to agreement states or material licensees, everyone
20 will pay a portion of these costs.

21 While this approach does eliminate the unfairness,
22 it provides for more equitable allocation of these costs by
23 treating them similar to overhead and allocating the cost
24 based on a direct budget for each class of licensees.

25 Move to the next chart, please.

1 After we have taken steps to make fees more
2 equitable, we then ask the question, can we make future fees
3 more predictable.

4 MR. SCROGGINS: Can we have chart 4, please?

5 [Slide.]

6 MR. FUNCHES: This was another concern that had
7 been raised by licensees in the past in their comments about
8 the unpredictability of fees. In the past there have been
9 large year to year percent changes in annual fees for
10 various reasons. These changes may occur for relatively
11 small changes in the magnitude of budget changes in the
12 number of licensees, changes in Part 170 fee collections.

13 Also with the various types of fees that we
14 charge, it is sometimes difficult for licensees to know when
15 the fees are expected and therefore to plan for them. This
16 is particularly true in the small materials license area,
17 many of whom are inspected on a frequency that is longer
18 than annually.

19 We believe we can improve the predictability of
20 fees without introducing major new concerns about fairness
21 and equity. First, we are proposing to reduce the
22 complexity of our current fee structure and make it easier
23 for licensees to predict and plan for NRC fees. We are
24 planning to accomplish this by combining the material flat
25 fees, that is those inspection fees that are based on the

1 average, with the annual fee. We do not believe this will
2 introduce new fairness and equity concerns because, first,
3 these flat inspection fees are based on average hours now.
4 Within a particular fee category, the inspection frequency
5 tends to be the same for all licensees.

6 So, in essence, what we are proposing to do is
7 asking each licensee to pay a portion of their inspection
8 cost annually and at the same time the total cost over a
9 period of time will be about the same.

10 The next step we would like to take is to
11 stabilize fees for future years. In this area, what we're
12 planning to do is to establish a base fee in 1995. This
13 base fee will reflect the efforts we are taking to make fees
14 more equitable and then for the future, and we would say for
15 the next four years, we would like to make marginal changes
16 to these base annual fees that are equal to the marginal
17 changes in the total budget that must be recovered from
18 fees. We will, of course, adjust the amount to reflect
19 losses in the number of licensees or changes in the
20 collection from Part 170.

21 CHAIRMAN SELIN: I followed you up to the last
22 point. If we put in losses of licensees, then that's going
23 to -- that could lead to considerable instability.

24 MR. FUNCHES: I think we were considering the
25 gross change over the total number of licensees, not in a

1 particular category.

2 CHAIRMAN SELIN: Oh, I see.

3 MR. FUNCHES: So it would be the total change.
4 So, we would look at the percent change in the budget and
5 then how much we would have to decrease or increase that
6 percentage to reflect total losses of licensing --

7 CHAIRMAN SELIN: So when you have uranium mines
8 where you have a small number --

9 MR. FUNCHES: Right.

10 CHAIRMAN SELIN: -- if one dropped out, the other
11 uranium mines wouldn't have to pick up --

12 MR. FUNCHES: A third. You know, if you had three
13 and one dropped out, that wouldn't be spread to everybody
14 again.

15 COMMISSIONER de PLANQUE: So you're freezing the
16 proportions as of this --

17 MR. FUNCHES: Yes, right. Absolutely correct.

18 MR. SCROGGINS: With one comment and that is
19 clearly what we would look at each year is because of
20 actions taken and budgets, in the budget if there were
21 significant changes in the programs you would obviously have
22 to look at that and see what impact that might have. If it
23 were a significant enough change, you might have to
24 rebaseline.

25 CHAIRMAN SELIN: But the idea is to protect people

1 from changes in the denominator, not changes in the
2 numerator. Changes in the number in a given class because
3 the fellow is doing exactly his job. He hasn't done
4 anything different, so there's a 50 percent increase because
5 the third party dropped out.

6 MR. FUNCHES: Right.

7 MR. SCROGGINS: That's correct.

8 MR. FUNCHES: I would note a byproduct of these
9 actions would be -- of improving the predictability would be
10 to help us streamline the fee program also.

11 We move to chart 5.

12 [Slide.]

13 MR. FUNCHES: Another area we've been working on
14 for the last couple years is the small entity size standards
15 and fees. There have been two concerns that have been
16 raised. First, the size standards which were established in
17 the 1980s had not been increased or updated for inflation.
18 A second concern was that we use a receipt-based size
19 standard for all small entities. The manufacturers had
20 commented that a receipt-based size standard for them was
21 not appropriate, an employee-based standard would be more
22 appropriate.

23 The Commission recently decided to implement new
24 size standards after notice and comment. The final rule
25 implementing those size standards has been sent to SBA. We

1 are expecting the final size standard to be published before
2 we issued a final rule. Therefore, we are adjusting our
3 rule to reflect those new size standards. Specifically we
4 are increasing the small entity size standard for non-
5 manufacturing entities from \$3.5 million to \$5 million which
6 reflects inflection since the early '80s. We will also
7 modify the lower tier size standard to reflect similar
8 change.

9 A new size standard has been created for
10 manufacturing small entities of 500 people and we will
11 create a lower tier of 35 people. This number would roughly
12 give you the same proportion as the dollar size standard for
13 the lower tier.

14 We're able to maintain the two maximum fees that
15 we have established before, \$1800 for small entities and
16 \$400 for the lower tier, without increasing the amount of
17 additional cost that would be passed onto the licensees.
18 This is primarily because the fees for the licensee will be
19 decreasing. We believe that this effort is consistent with
20 the Regulatory Flexibility Act to minimize the impact on
21 small businesses.

22 CHAIRMAN SELIN: Could you explain just a little
23 bit about why we think that the number of employees rather
24 than the revenues is a right measure for manufacturing?

25 MR. FUNCHES: The reason being is that we are

1 using a gross receipt as opposed to --

2 CHAIRMAN SELIN: As opposed to value added?

3 MR. FUNCHES: Right, as a profit. And the costs,
4 the input costs, raw materials, capital is a lot more than
5 for manufacturing.

6 CHAIRMAN SELIN: But you have the strange
7 situation that the more profitable a firm becomes for a
8 given amount of revenues, the more likely they are to be a
9 -- I mean they cut some employees and they could make larger
10 profits, so they get lower fees instead of higher fees. But
11 basically the employees are a measure of value added whereas
12 the gross receipts is a measure of total cost.

13 MR. FUNCHES: Right.

14 CHAIRMAN SELIN: And it's too hard to calculate
15 value added.

16 MR. FUNCHES: Right.

17 CHAIRMAN SELIN: I see.

18 MR. FUNCHES: Chart 6, please.

19 [Slide.]

20 CHAIRMAN SELIN: This chart qualifies you to be
21 the Chairman of the Ways and Means Committee. It seems to
22 me that everybody makes out. How can you do that? We
23 redistributed fees and they all go down.

24 MR. TAYLOR: Explain it, Jesse.

25 MR. FUNCHES: I think as a result of the action

1 we're taking. First, the reduced budget. Second, we are
2 redistributing certain costs. And I think the third factor
3 is that there is a change in the estimated collection for
4 Part 170.

5 CHAIRMAN SELIN: I see.

6 MR. FUNCHES: As a result of those changes, the
7 fees for most licensees will go down. The annual fees, that
8 is. For power reactors, their fees are essentially the
9 same. They'll go down to about \$100,000, which is about 4
10 percent. A uranium mill fee would go down from \$7400 --

11 CHAIRMAN SELIN: What has happened to the 171 fees
12 between '94 and '95?

13 MR. SCROGGINS: You mean the 170 fees?

14 CHAIRMAN SELIN: Maybe I've got it backwards. Not
15 the annual fees, but the inspection fees.

16 MR. SCROGGINS: Yes, the 170 fees. Well, part of
17 it, very honestly, is the fact that in fiscal '94 or fiscal
18 '95 we are actually collecting more on 170 because of the
19 accelerated fee billing process that we put in place near
20 the end of fiscal '94 and this results in actually more
21 billing occurring in '95 than compared to '94. So, actual
22 total 170 that will be collected will be more in fiscal '95.

23 CHAIRMAN SELIN: If you take a look at the total
24 cost to licensees, not just the 171 or the 170s, how do '95
25 figures compare to '94? Do the reactor people pay more in

1 '95 than they did in '94?

2 MR. FUNCHES: Yes, they do.,

3 MR. SCROGGINS: Yes, they do.

4 MR. FUNCHES: If we did that, make that
5 comparison, in '94 they paid \$432 million. In fiscal year
6 1995, they will pay \$440 million.

7 MR. SCROGGINS: So, it's a very small increase.

8 MR. FUNCHES: About an \$8 million increase.

9 CHAIRMAN SELIN: And how many licensees are there,
10 the same number or no?

11 MR. FUNCHES: The same number of licensees, yes.

12 CHAIRMAN SELIN: What's happened with the idea of
13 pushing more cost from 170 to 171?

14 MR. SCROGGINS: Well, the one part that's proposed
15 here, which is a flat inspection fee, is for materials.

16 CHAIRMAN SELIN: But that would be on the reactor
17 side. I'm sorry. On the reactor side, have we decided --
18 can we push more costs in the annual fee on the grounds that
19 some of these variable fees really aren't very variable or
20 is that a poor idea?

21 MR. TAYLOR: It takes legislation.

22 CHAIRMAN SELIN: I know we can't just wipe them
23 out, but there was some question about whether we could
24 reduce our actual operating cost by putting some of the
25 variable fees on just an estimated or calculated basis.

1 MR. FUNCHES: Yes. We are still looking at the
2 possibility of adding some of those in the future. The
3 first step we're taking is to look at the flat fees and
4 combine those. There was also some question on whether or
5 not we -- how much legislation we need to give us the
6 flexibility to combine those. The authorization bill that
7 we were submitting would --

8 CHAIRMAN SELIN: I mean, you know, we've got to do
9 what we can do without legislation. But we could have some
10 flexibility to look at certain annual fees and say since
11 they vary insignificantly from year to year, they're
12 appropriate for --

13 MR. SCROGGINS: That had begun to be looked at.

14 CHAIRMAN SELIN: -- fixed fees.

15 MR. SCROGGINS: And I think as Jesse indicated it
16 was difficult in the sense that we weren't clear in all
17 cases just how much could you do with or without the
18 legislation, the policy issue versus legislation. Secondly,
19 we wanted to take a step in that direction. We felt we had
20 a much stronger case with the materials inspection fees
21 because they were already flat fees based on average. So,
22 that was clearly an easier justifiable step to take.

23 I think the point you're raising is one that we
24 still in a sense have on our own table to not totally throw
25 out but to go back and look at. But given the time frame

1 that we had with all these uncertainties and given the
2 legislative uncertainty, we decided not to move in that
3 direction at this time.

4 MR. TAYLOR: We also had the concept of reactors
5 with particular problems our 170 costs go up quite
6 significantly.

7 CHAIRMAN SELIN: I understand that, but the
8 concept was to put as much routine cost into the annual fee
9 as we could and still be prepared to bill for those costs
10 that --

11 MR. TAYLOR: We can look further at that.

12 CHAIRMAN SELIN: You know, with the
13 differentiation in SALP and inspection, we may not want to
14 do it. We may say that the reduction in hours based on
15 better performance should also be reflected in lower fees.
16 I understand that there are arguments both ways.

17 One thing I would like to see before we actually
18 finish with all this is for '94, for '95 and an estimate for
19 '96, what the total fees would be, not just the annual fees
20 for each class of licensee. Both the annual and the
21 variable fees.

22 The more I hear your answers, the more I'm
23 impressed with your qualifications to be -- it turns out
24 that the costs don't really go down. Now you see it, now
25 you don't, these go down. But in particular, is it a one

1 time speed-up from '94 to '95 in the collection of --

2 MR. SCROGGINS: Well, the impact of the amount of
3 collections in 170, yes, that's essentially a one time shot,
4 that's correct.

5 CHAIRMAN SELIN: And so I really would like to see
6 if you applied the same rule to the estimated budget for '96
7 how that would come out as well.

8 MR. FUNCHES: Using the --

9 MR. SCROGGINS: The President's budget.

10 CHAIRMAN SELIN: Using the President's budget, but
11 the algorithms that you're proposing at this point.

12 MR. FUNCHES: Right.

13 MR. SCROGGINS: Sure.

14 CHAIRMAN SELIN: So, it's really two changes. One
15 is to add in the variable fees, to have two columns for each
16 year of 170 and 171, for 1994 and 1995, and then the second
17 change is to project those against the President's budget
18 for 1996.

19 MR. TAYLOR: Will do.

20 MR. FUNCHES: These fees are included in the '95
21 fee rule. The rule has been submitted to the Federal
22 Register and they informed us that the rule will be
23 published on Monday. We also are in the process of mailing
24 a copy of the rule to each licensee for comment.

25 In summary, we've taken steps in three areas

1 consistent with the Commission on the fee policy paper.
2 First, we've taken action to make fees more equitable.
3 Second, we've taken action to improve the predictability of
4 fees. And third, we are continuing our efforts to reduce
5 the impact on small entities. As I indicated before, we'll
6 continue our effort to keep the costs in the budget as low
7 as we can. We believe these actions will improve the fee
8 program.

9 That ends my presentation.

10 CHAIRMAN SELIN: Before I turn to my fellow
11 commissioners, the other thing I'd like to see, at the
12 bottom of each column is the total of -- I'm sorry.
13 Actually I'd like to see four columns for each year. I'm
14 sorry. Three columns for each year. Per licensee the 170
15 fee, per licensee the 171 fee, and then the total amount of
16 money collected between the two for the whole set of
17 licensees. So, the third column in a year -- the first
18 column would be power reactors annual fee. The second is
19 170 fees, the third is the total amount of money collected
20 from the class of power reactor licensees in each of the
21 years.

22 Commissioner Rogers?

23 COMMISSIONER ROGERS: I don't have anything.

24 CHAIRMAN SELIN: Commissioner de Planque?

25 COMMISSIONER de PLANQUE: Yes. We talked earlier

1 about freezing the proportionality.

2 MR. FUNCHES: Right.

3 COMMISSIONER de PLANQUE: Can you tell us if
4 you've given much thought to how you would reconsider the
5 proportionality? What criteria might you be looking for
6 down the road to justify a change in that proportionality?

7 MR. FUNCHES: I think the thing we were looking
8 more at would be the absolute value of the change as opposed
9 to, say, a percentage change because I think you would get
10 spiked from time to time and say it's a particular program,
11 you might have a \$2 million study here for a small group of
12 licensees, but next year you might go down.

13 COMMISSIONER de PLANQUE: So you're saying if it's
14 a spike in time you might not adjust.

15 MR. FUNCHES: Right. We expected this back in
16 time and oscillating, we would not -- I think it's more
17 important to focus in on the absolute value of the change as
18 opposed to, say, a percentage change to a small subgroup of
19 licensees in terms of maybe hundreds of thousands of
20 dollars. It might be a big percentage, but in the totality
21 it would be very small. So, we would focus on the absolute
22 value of the budget changes.

23 COMMISSIONER de PLANQUE: Because I still have the
24 sense out there if licensees' fees go up by more than some
25 reasonable percentage, they have a great difficulty in their

1 planning.

2 MR. FUNCHES: And I think the other thing we would
3 do is we would focus on it during the budget preparation.
4 And by having this time frame, I think it gives us time to
5 act as part of our budget preparation too, because typically
6 we're a couple years ahead and we can see what's happening
7 and then make the budget decision that we also need to make.

8 COMMISSIONER de PLANQUE: That's the other element
9 of it, the fair warning of changes coming down the pike.
10 That's always been a significant problem.

11 MR. FUNCHES: Yes.

12 COMMISSIONER de PLANQUE: Okay. Thank you.

13 CHAIRMAN SELIN: I think this is terrific. I
14 really think that not only have you solved the problems that
15 you put in there, but there's been another sort of
16 subliminal or not usually mentioned problem. That is we do
17 the rule and then the fees just sort of come out
18 mechanically. What you've described is a process that says,
19 "We're going to take a look. If there's a change, we're
20 going to take a look and we'll have high level people
21 looking at this, not just send out these," because too many
22 times we get complaints, the Commission looks at it or the
23 media looks and says, "You know, they're right. We really
24 shouldn't have done that." Now you're talking about a
25 process I think that will catch these things before the

1 document goes out. We don't want to be in the position of
2 just oiling the most squeaky wheel, but really trying to
3 catch the -- and in any algorithm, the application will
4 occasionally produce anomalous results and we want to look
5 at those before they go out.

6 MR. TAYLOR: That's right.

7 CHAIRMAN SELIN: So, I really do think this is not
8 only fair and more predictable, but it allows the imposition
9 of some management discipline and not just out they come and
10 see what shows up.

11 So, I think this is all very good. I do applaud
12 the effort and also the taking charge of our own fate. No
13 agency should just be complaining, "We can't do anything.
14 The legislation won't let us do it." You've done pretty
15 much what we can do within the existing legislation and you
16 keep pushing to see what we can do better, even though we
17 would like to get better legislation to do what we can
18 within what we have and that's commendable.

19 Very well done. Thank you very much.

20 [Whereupon, at 2:35 p.m., the above-entitled
21 meeting was concluded.]
22
23
24
25

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON PROPOSED CHANGES TO NRC
FEE RULE - PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Wednesday, March 15, 1995

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: Carol Lynch

Reporter: Peter Lynch



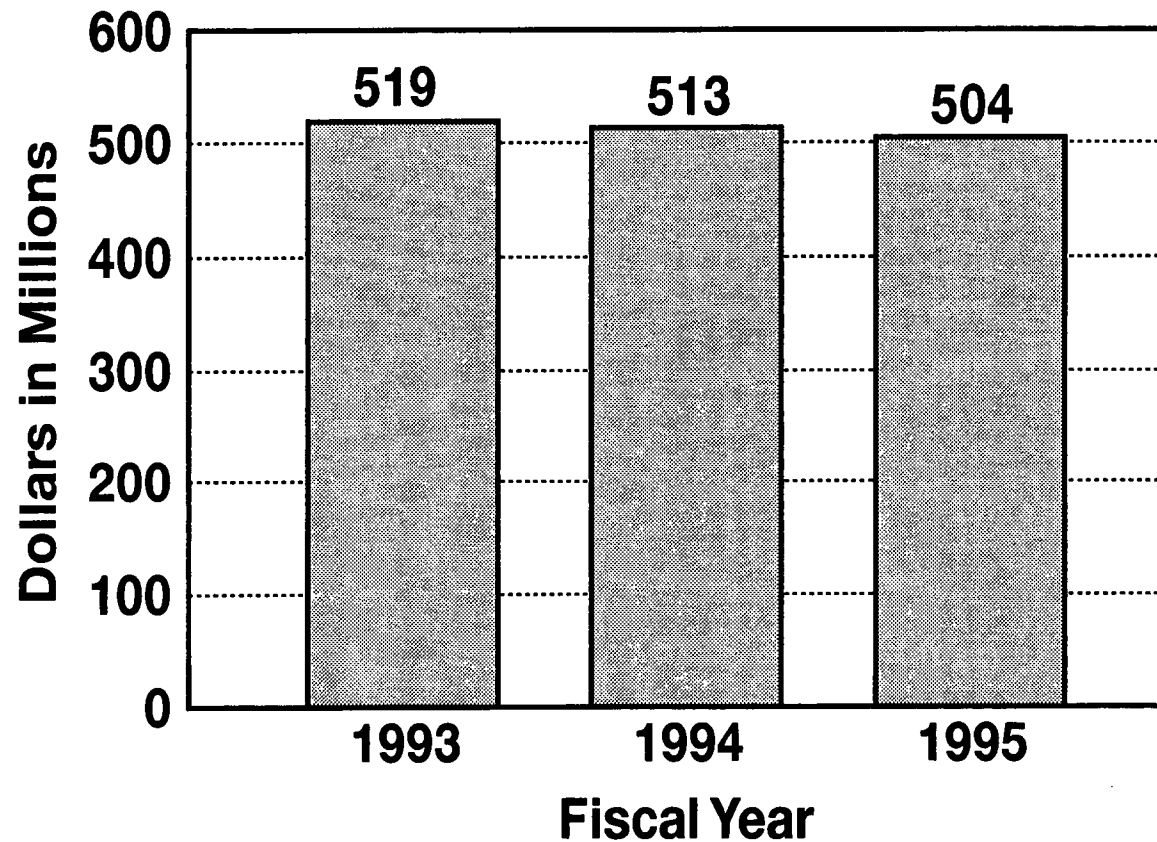
FY 1995 PROPOSED FEE RULE

Jesse L. Funches
Office of the Controller
March 15, 1995

BACKGROUND

- **Omnibus Budget Reconciliation Act of 1990**
- **Fee policy review in response to Energy Policy Act of 1992**
 - **Legislation recommended by NRC, but not enacted**
- **Actions being taken by NRC**
 - **Reducing budget authority**
 - **Making fees more equitable**
 - **Increasing predictability of fees for licensees**
 - **Continuing to reduce impact of fees on small business**

REDUCED BUDGET AUTHORITY* TO BE RECOVERED FROM FEES



***Excludes funds appropriated from Nuclear Waste Fund**

MAKING FEES MORE EQUITABLE

- **Concerns**

- **Some NRC activities are not related to NRC licensees**
- **Not all direct beneficiaries of NRC activities pay fees**

- **NRC Actions**

- **Eliminate certain activities from budget**
 - **Use reimbursable agreements where possible**
- **Allocate certain costs to broadest base of NRC licensees**

IMPROVING PREDICTABILITY OF FEES

- **Concerns**

- **Large year-to-year changes in fees**
- **Additional decrease in number of licenses possible**

- **NRC Actions**

- **Combine materials flat inspection fees with annual fee**
- **Stabilize fees for future years**
 - **Base FY 1996-1999 annual fees on percent change to NRC FY 1995 budget**

CONTINUE TO REDUCE IMPACT ON SMALL BUSINESS

- **Increase small entity size standards for non-manufacturing entities**
 - **Increase small entity from \$3.5M to \$5.0M**
 - **Increase lower tier from \$250K to \$350K**
- **Create size standards for manufacturing entities**
 - **500 employees for small entity**
 - **35 employees for lower tier**
- **Maintain maximum annual fees**
 - **\$1,800 for small entity**
 - **\$400 for lower tier**

REDUCED FY 1995 ANNUAL FEES

	<u>FY 1994</u>	<u>Proposed FY 1995</u>
Power Reactors	\$3,078,000	\$2,967,000
LEU Fuel Facility	1,484,770	1,261,000
Spent Fuel Storage	365,170	291,500
Uranium Mill	74,670	60,900
Broad Scope Medical	32,570	23,300*
Radiographer	19,170	14,000*
Well Logger	12,870	8,100*
Other Medical	6,070	4,700*
Gauge User	2,470	1,700*
Transportation Cask User	1,070	1,000

***Separate inspection fee no longer required**

ACTIVITIES RELATED TO FAIRNESS AND EQUITY CONCERNS

- **Some NRC activities are not related to NRC licensees**
 - **International**
 - **Agreement States oversight**
 - **Direct support to Agreement States**
- **Not all direct beneficiaries of NRC activities pay fees**
 - **Regulatory support applicable to Agreement State Licensees**
 - **Federal agency exemption**
 - **Non-profit educational exemption**
 - **Small entity reduction**
 - **Regulatory liabilities created by past licensees (e.g., SDMP sites)**
 - **Generic decommissioning/reclamation activities**

BACKUP



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

- N O T I C E -

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION RELATING TO PROPOSED REVISIONS TO THE NUCLEAR REGULATORY COMMISSION'S LICENSE FEE REGULATIONS IN 10 CFR PARTS 170 AND 171 FOR FY 1995. THE PROPOSED CHANGES AFFECT ALL APPLICANTS FOR AND HOLDERS OF NRC LICENSES, CERTIFICATES AND APPROVALS.



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

March 14, 1995

IMPORTANT NOTICE

TO: ALL PARTS 30, 40, 50, 61, 70, 71, 72, 73, AND 110 LICENSEES,
APPLICANTS AND REACTOR VENDORS

SUBJECT: PROPOSED REVISIONS TO 10 CFR PARTS 170 AND 171 ON LICENSE,
INSPECTION AND ANNUAL FEES FOR FY 1995

Within the next few days, the U.S. Nuclear Regulatory Commission will publish in the Federal Register for public comment the enclosed Notice of Proposed Rulemaking. This notice proposes revisions to the fee requirements of 10 CFR Part 170 ("Fees for Facilities and Materials Licenses and Other Regulatory Services . . . ") and Part 171 ("Annual Fees for Reactor Operating Licenses and Fuel Cycle Licenses and Materials Licenses, . . . "). These revisions are being made to implement Public Law 101-508 enacted on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority less the appropriation from the Nuclear Waste Fund in FY 1995. The amount to be recovered for FY 1995 is approximately \$504 million.

The proposed rule reflects actions taken by the NRC to (1) reduce its budget and therefore fees; (2) make fees more equitable; (3) improve the predictability of fees for licensees; and (4) continue to reduce the impact of fees on small entities in response to the Regulatory Flexibility Act. Through improved financial management, we have reduced the amount that is to be recovered in FY 1995 from fees by \$9.4 million compared to FY 1994 and \$15.3 million compared to FY 1993. These reductions are being passed along to NRC licensees in the form of reduced fees.

In response to the Energy Policy Act of 1992, the NRC reviewed its fee policies and submitted a report to Congress on February 23, 1994. That report identified modifications to the laws governing fees to alleviate major concerns about fairness and equity that result from assessing fees to recover the costs of certain NRC activities. Since legislation has not been enacted to address these concerns, the NRC is proposing to take action under the existing fee laws to help mitigate these concerns. In this proposed rule, the costs of the activities related to these concerns are being allocated to the broadest base of NRC licensees so that licensees pay a portion of these costs based on their share of the total NRC budget.

The NRC is also proposing to improve the predictability of its fees for all classes of licensees. To this end, the "flat" inspection fees for those licensees who would have paid the "flat" inspection fees are being eliminated and the inspection costs included in the annual fees. The NRC is also planning to improve further the predictability of the annual fee for each class of licensees starting in FY 1996, by basing the annual fee on the percent change (plus or minus) to the NRC's FY 1995 budget.

The proposed rule continues the maximum small entity fee and responds to a previous concern by implementing new NRC size standards, which include an employee-based standard for manufacturing entities.

The result of the above actions would be more equitable and predictable fee policies and reduced annual fees compared to FY 1994 for most NRC licensees as follows:

<u>Class of Licensees</u>	<u>FY 1994 Annual Fee</u>	<u>Proposed FY 1995 Annual Fee</u>
Power Reactors	\$3,078,000	\$2,967,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF ₆ Conversion	1,169,770	639,200
Uranium Mills	74,670	60,900
Spent Fuel Storage	365,170	291,500
Transportation Cask User	1,070	1,000
<u>Typical Material Licenses</u>		
Radiographers	19,170	14,000*
Well Loggers	12,870	8,100*
Gauge Users	2,470	1,700*
Broad Scope Medical	32,570	23,300*
Other Medical	6,070	4,700*

* Separate inspection fees no longer required.

The specific proposed changes to Parts 170 and 171 would:

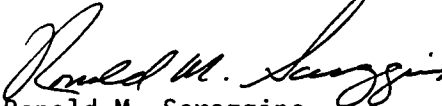
1. Part 170

- (a) Establish two professional hourly rates in 10 CFR 170.20 which would be used to determine the Part 170 fees assessed by the NRC. The proposed rate for the reactor program is \$123 per hour and the proposed rate for the materials program is \$116 per hour compared to \$133 per hour for all licensees in FY 1994;
- (b) Adjust the 10 CFR 170.31 licensing flat fees for materials licenses to reflect the decrease in the hourly rate and the revised average number of professional staff hours required to complete the licensing actions; and
- (c) Eliminate the materials "flat" inspection fees in 10 CFR 170.31 and include the costs of the inspections in the annual fees in 10 CFR 171.16(d) for the affected licensees. In the case of Agreement State licensees conducting activities in non-Agreement States under reciprocity, the inspection costs would be included in the application fee in 10 CFR 170.31, Category 16.

2. Part 171

- (a) Revise the annual fees by allocating costs that have raised fairness and equity concerns based on the percent of the budget for classes of NRC licensees that pay annual fees;
- (b) Streamline the fee process by assessing one uniform annual fee for all operating power reactors;
- (c) Revise the method for calculating the annual fees for fuel facilities and uranium recovery licensees to reflect more accurately the cost of providing regulatory services to the subclasses of licensees;
- (d) Adopt NRC's proposed revised size standards published November 30, 1994 (59 FR 61293) (\$5 million for nonmanufacturing and 500 employees for manufacturing entities), establish a lower-tier size standard for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, increase the lower tier receipts-based standard from the current level of \$250,000 in gross receipts to \$350,000 and maintain existing small entity fees;
- (e) Continue the proration of annual fees established in FY 1994 for license terminations and requests for possession-only licenses filed between October 1, 1994 and March 31, 1995;
- (f) The proposed rule indicates that beginning in FY 1996 the NRC plans to stabilize annual fees by changing the annual fees assessed to each class of licensees by the percent change (plus or minus) in the total NRC budget relative to FY 1995; and
- (g) The proposed rule requests comments on the new policy for assessing fees for the Office of Nuclear Regulatory Research activities related to advanced reactor design certification.

All parties desiring to submit written comments for consideration should send them to the Secretary for the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, within 30 days from publication in the Federal Register. Questions relating to the proposed revisions should be directed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Office of the Controller.


Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure:
Notice of Proposed Rulemaking

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement Public Law 101-508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately \$503.6 million.

DATES: The comment period expires (30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101-508 requires that NRC collect the FY 1995 fees by September 30, 1995, requests for extensions of the

comment period will not be granted.

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678).

The agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Proposed Action.
- III. Section-by-Section Analysis.
- IV. Environmental Impact: Categorical Exclusion.
- V. Paperwork Reduction Act Statement.
- VI. Regulatory Analysis.

- VII. Regulatory Flexibility Analysis.
- VIII. Backfit Analysis.

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published seven final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the Federal Register that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR Part 170 hourly rate and fees and the 10 CFR Part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on those challenges on March 16, 1993, in Allied-Signal v. NRC, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the Federal Register two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 lowered in some cases the maximum annual fee of \$1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A

lower tier small entity fee of \$400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), July 20, 1993 (58 FR 38666), and July 20, 1994 (59 FR 36895), the NRC published final rules in the Federal Register that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992, FY 1993, and FY 1994 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). In FY 1994, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but were assigned directly to the class of licensees that they support. Because this direct assignment resulted in a reduction of overhead costs allocated to each FTE, the cost per full time equivalent (FTE) was about 3 percent less than it would have been without the additional direct assignment.

The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the AlliedSignal v. NRC judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669-72). In brief, the NRC created two groups--large waste generators and small waste generators. Licensees within each group are charged a uniform fee. On May 19, 1994 (59 FR 26097), the NRC amended its fee regulations in 10 CFR Part 171 to establish revised FY 1991 and FY 1992 surcharges for NRC licensees based on this revised method.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. This exemption was also included in the FY 1994 final rule. In response to the March 16, 1993, judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided in nonprofit institutions. The Commission denied that request on March 17, 1994 (59 FR 12555).

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is \$525.6 million of which approximately \$22.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$503.6 million in FY 1995 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. This amount to be recovered for FY 1995 is about \$9.4 million less than the total amount to be recovered for FY 1994 and \$15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately \$137.7 million will be recovered in FY 1995 from the fees assessed under 10 CFR Part 170. The remaining \$365.9 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1995.

Recognizing that OBRA-90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA-92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the

Federal Register on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR Part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is proposing certain changes in 10 CFR Part 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These proposed changes are summarized as follows and

detailed in the following sections.

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately \$56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. Currently, using three different methodologies, these costs have been allocated to classes of licensees. Approximately 50 percent of these costs were paid by power reactors. Under the proposed rule, these costs will instead be treated similar to overhead and distributed to each class of licensees based on the percent of the budget for that class. As a result, power reactors will pay a greater percentage of these costs.

2. Eliminate the materials selected inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as "flat" inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These proposed actions would streamline the license fee process and provide more predictable fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are proposed instead of a single rate.

4. Change the methodology for calculating annual fees for reactors, fuel facilities and uranium recovery licensees to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. Modify NRC small entity and lower-tier size standards for annual fee purposes.

As a result of the reduced budget amount to be recovered for FY 1995 and these proposed changes, the annual fees for a large majority of the licensees would be reduced. The following provides illustrative examples of the changes in the annual fees.

<u>Class of Licensees</u>	<u>FY 1994 Annual Fee</u>	<u>Proposed FY 1995 Annual Fee</u>
Power Reactors	\$3,078,000	\$2,967,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF ₆ Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
<u>Typical Material Licenses</u>		
Radiographers	19,170	14,000
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,400

The NRC also notes that it plans to increase the use of reimbursable agreements to avoid including certain costs that do not benefit NRC licensees within the NRC budget. By doing this, the budget will be reduced and the fees lowered. The NRC plans to exclude funds for training, travel, and technical support to the Agreement States and for review of Department of Energy (DOE)/Department of Defense (DOD) defense related projects from the NRC budget, beginning in FY 1997. This support would be provided to the Agreement States and DOE/DOD through reimbursable agreements, which would eliminate the need to recover the cost through fees assessed to NRC licensees. For FY 1995, these costs will continue to be recovered through fees. Because this change affects the budget and does not alter fee policies or methods, it falls outside the scope of this proposed rulemaking and the Commission is not soliciting comments on this policy change.

Although not a specific change in this rule, to help stabilize fees, beginning in FY 1996, the NRC proposes that the annual fees be adjusted only by the percent change in NRC's total budget. A base annual fee would be established in FY 1995 using current methodology modified by the changes in the final FY 1995 rule, and the percentage change (plus or minus) in the NRC total FY 1995 budget would be applied to all annual fees for the next four years (FY 1996-FY 1998 and FY 1999 if OBRA-90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of

licensees, in which case the annual fee base would be reestablished. The decision on whether to establish a new baseline would be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR Part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent. The NRC seeks comments on this approach in this rulemaking.

The Commission notes that, if, based on public comments, the Commission decides not to pursue some or all of these new proposed policies, then the respective current fee policies would be continued for FY 1995. Comments are also requested on whether the NRC should continue any or all of its current fee policies in lieu of the policies it proposes to change in this rule.

The NRC contemplates that any fees to be collected as a result of this proposed rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA-90. Therefore, as in FYs 1991-1994 the fees, if adopted, will become effective 30 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of Section 171.17. The annual fees for both reactor and material licensees are prorated based on (1) the date applications are filed during the FY to terminate a license or obtain a possession-only license (POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services.

The NRC proposes four amendments to Part 170. These amendments do not change the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The proposed amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the NRC is proposing to amend §170.11 of the Commission's fee regulations to conform them to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge Part 170 fees

to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Second, the NRC is proposing to revise the current method of calculating the 10 CFR Part 170 professional hourly rate. Currently, there is one professional hourly rate established in \$170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was \$133 per hour for FY 1994. The NRC proposes to establish two professional hourly rates for FY 1995, which will be used to determine the Part 170 fees. The NRC proposes to establish a rate of \$123 per hour (\$214,765 per direct FTE) for the reactor program. This rate is applicable to those licenses covered by 10 CFR Part 170.21 of the fee regulations. A second rate of \$116 per hour (\$203,096 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate is applicable to those licenses covered by 10 CFR Part 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation

from the NWF.

The two rates would be based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) will be assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concepts will be discussed more fully in Section III--Section-by-Section Analysis.

Third, the NRC proposes that the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees be revised to reflect both the revised hourly rates and

the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are based on the average cost method (flat fees).

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The proposed licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the proposed nuclear materials professional hourly rate for FY 1995 of \$116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the proposed licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the proposed fees for renewals would increase in over 70 percent of the cases.

Fourth, the NRC is proposing to streamline the fee program and improve the predictability of fees by eliminating the

materials "flat" inspection fees in 170.31 and including the cost of the inspections in 10 CFR Part 171. Eliminating the 10 CFR Part 170 materials "flat" fees would recognize that the "regulatory service" to licensees, referred to in OBRA-90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This proposed action would not result in any net fee increases for affected licensees and would provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The proposed materials annual fees, which include the 10 CFR Part 170 inspection fees, would become effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR Part 170 inspection fee for inspections conducted in FY 1995 would receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR Part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is proposing to (1) establish two 10 CFR Part 170 hourly rates; (2) revise the licensing fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's

requirement that fees be revised to reflect the cost of the agency of providing the service; and (3) eliminate the materials "flat" inspection fees in §170.31 and include the costs of inspections with the materials annual fees in §171.16(d), or with the reciprocity application fee in fee category §170.31, Category 16.

Assessing Fees for Final Design Approval (FDA) and Design Certification (DC) Reviews

During FY 1994, the question was raised by several standard design vendors concerning the NRC's policy on assessment of 10 CFR Part 170 licensing fees beyond issuance of the FDA. The Commission has examined this issue and has decided to continue assessing fees to vendors for its review costs incurred following the issuance of the FDA. This would include fees to recover NRC costs for preparation of the Design Control Document, review of comments on a proposed certification rule, and preparation of a final certification rule. 10 CFR Part 170 fees will not be assessed to the vendor for costs incurred for any contested hearing before the Atomic Safety Licensing Board Panel (ASLBP) during the design certification review and rulemaking.

While the NRC understands the impact of fees on its applicants and licensees, it has concluded that 10 CFR Part 170 review fees should continue to be assessed beyond the FDA

issuance, because the vendor, who applies for a certification, is the principal beneficiary of the certification. The fundamental policy underlying 10 CFR Part 170 fees, which are based on the requirements of the Independent Offices Appropriation Act of 1952, as amended, is that the principal beneficiary of a regulatory service should bear the cost of providing that service. Applicants for design certifications will not be charged 10 CFR Part 170 fees for any hearings held before an ASLBP under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification. It has long been the policy of the NRC not to charge Part 170 fees for hearings which are not mandated by law, and the NRC has maintained this policy despite its recent obligation to recover 100 percent of the budget through fees. Thus, for example, the NRC does not charge Part 170 fees for power reactor operating license, amendment, or enforcement hearings. The costs of such hearings are recovered through the annual fees assessed to NRC licensees under 10 CFR Part 171.

The NRC bills all design certification (DC) applicants for staff hours and contractual expenses incurred by the Office of Nuclear Reactor Regulation (NRR) in support of design certification and approval review activities as stipulated in 10 CFR Part 170. The Office of Nuclear Regulatory Research (RES) staff and contractual expenses related to advanced reactor designs have been billed under 10 CFR Part 171 to holders of

operating reactor licenses. Although NRR is responsible for these advanced reactor reviews and licensing determinations, certain activities performed by RES can be essential elements of these reviews. If, for example, the review can be conducted more efficiently by RES due to experience of its staff, NRR would request that RES perform the review and provide the safety evaluation report input. In conducting recent DC reviews, NRR and RES have coordinated their activities to enhance the effectiveness and efficiency of the reviews. In specific technical areas (e.g., evaluation of DC applicant test programs), RES staff expertise and contractual resources provide direct support to NRR's licensing review. As such, some RES activities involve direct review of advanced reactor designs and provide input to the safety and licensing conclusions for design certification. The NRC believes that some adjustments to the fee policy are necessary to properly assess the applicant fees for design certification review activities performed by RES. Beginning with the effective date of the FY 1995 fee rule, the NRC plans to bill the applicants for RES's direct review and evaluation of the standard design in support of NRC's FDA and design certification. Direct review includes evaluation of the applicant's test programs, vendor codes and topical reports, standard safety analysis reports, and other supporting design and analysis information. Under this approach, fee assessment for RES costs would be treated identically to NRR charges for staff full-time equivalent (FTE) employees or contractors associated

with the FDA/DC review. Billing vendors for RES activities that are in direct review of the applicant's design is consistent with the major principle of 10 CFR Part 170 of assessing fees to the principal beneficiary of the NRC regulatory activity (i.e., vendor receipt of an FDA/DC). The applicant would not be assessed fees for confirmatory research related to the designs. The budget for confirmatory research would continue to be recovered from annual fees assessed to operating power reactor licensees under 10 CFR Part 171.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC.

The NRC proposes nine amendments to 10 CFR Part 171. First, the NRC is proposing to modify its method for recovering certain budgeted costs. The report to Congress in response to EPA-92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is proposing to modify its current policies for allocating the budgeted costs for these and other activities that cause fairness

and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR Part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. It is proposed that the budgeted costs of approximately \$56 million for these activities be borne by all NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC proposes to allocate the approximately \$56 million in fees for activities that raise fairness and equity concerns to all licensees, based on the budgeted dollars for each class of licensees. By allocating the costs in this way, the entire population of NRC licensees would pay the costs. The allocation would be based on the amount of the budget directly attributable to a class of licensees. This would result in operating power reactors paying approximately 89 percent of the costs of the activities in question with the other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 would be amended to provide that the NRC will publish the proposed rule in the Federal Register as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in §171.15(d) would be revised to reflect a single uniform annual fee. The NRC is proposing to streamline the fee program by assessing one uniform annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time-consuming process in determining power reactor annual fees. The annual fees have been determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric, and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor, that is, whether or not it is located east or west of the Rocky Mountains. The NRC indicated

in the FY 1991 rule (56 FR 31479; July 10, 1991), and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would reexamine this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The Office of the Inspector General (OIG) in its report on license fees dated October 26, 1993, indicated that the fee process is very detailed and labor intensive and that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG report stated that the determination of Part 171 fees could be simplified by eliminating/streamlining much of the detailed analyses performed as part of the process. The NRC, for FY 1995, calculated the reactor annual fees using both the current method and the proposed uniform method. For FY 1995, the lowest annual fee using the current method is about \$20,000 less than the proposed uniform fee of about \$3 million for an operating reactor. The NRC believes that this difference is small enough, relative to the size of the annual fee, to justify moving to a uniform annual fee particularly in light of administrative savings that will follow. Therefore, in an effort to streamline the fee program consistent with the OIG report on fees and for ease of administration, whereby a single annual fee can be used for fee billing purposes, the NRC is proposing to establish a uniform annual fee for each operating power reactor.

Fifth, as discussed earlier, the annual fees for materials licenses in §171.16(d) would include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR Part 170.31.

Sixth, the NRC is proposing to refine the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised by B&W Fuel Company, General Atomics and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). Having conducted its own reexamination, the NRC is therefore proposing revised methodologies for determining annual fees for both fuel facility and uranium recovery licensees. These revised methodologies have been used to determine the proposed FY 1995 annual fees. The use of the revised methodologies results in the annual fee more accurately reflecting the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The proposed methodologies are explained in more detail in Section III -- Section-by-Section Analysis.

Seventh, the NRC is proposing to modify the lower-tier size standard for those licensees that qualify as a small entity under the NRC's proposed size standards, published on November 30, 1994

(59 FR 61293). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to adjust its receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA final rule. The NRC also proposed to eliminate the separate \$1 million size standard for private practice physicians and to apply the receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would apply to the types of manufacturing industries that hold an NRC license. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed has been developed and sent to the SBA for review and approval. The NRC expects to publish the final rule before the final fee rule becomes effective.

The NRC intends to use the revised standards in the final FY 1995 fee rule. The small entity fee categories in §171.16(c) of this proposed fee rule have been modified to reflect the proposed

changes in the NRC's size standards. The existing maximum small entity annual fee of \$1800 will be continued for all small entities except those defined as lower-tier small entities in this rule. The existing lower-tier small entity fee of \$400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than \$350,000, a higher threshold than the current lower-tier level of \$250,000 in gross receipts.

Eighth, the NRC is proposing to modify Footnote 1 of 10 CFR 171.16(d) to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees

assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994. Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Ninth, the NRC is proposing to amend §171.19 to credit the quarterly partial annual fee payments and "flat" inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the two proposed revised professional hourly rates discussed previously in the summary of the proposed changes to 10 CFR Part 170. The amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such

class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692-93). For those NRC costs not attributable to a class of licensees, the proposed amendments to 10 CFR Part 171 follow the conferees' guidance which states that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees . . . " (136 Cong. Rec. at H12692-3).

C. FY 1995 Budgeted Costs.

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR Parts 170 and 171 fees are shown in Table I.

Table I
Recovery of NRC's FY 1995 Budget Authority
(Dollars in millions)

<u>Recovery Method</u>	<u>Estimated Amount</u>
Nuclear Waste Fund	\$22.0
Part 170 (license and inspection fees)	137.7
Other receipts	.1
Part 171 (annual fees)	
Power Reactors	265.3
Nonpower Reactors	.3
Fuel Facilities	10.1
Spent Fuel Storage	1.7

Uranium Recovery	1.8
Transportation	4.2
Material Users	24.9 ^{1/}
Rare Earth Facilities	<u>.1</u>

Subtotal Part 171 \$308.4

Costs remaining to be recovered not identified above	<u>57.4</u>
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Total \$525.6

^{1/}Includes \$5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the \$57.4 million remaining to be recovered in Table I, approximately \$5.8 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower-tier small entity fee of \$400 for certain licensees. The composition of the \$63.2 million is as follows:

Table II

Activities To Be Recovered Through Assessment Of A Surcharge

<u>Activities</u>	<u>Dollars in Millions</u>
Federal Agency Exemption	\$1.6
Nonprofit Educational Exemption	6.1
International Activities	10.5
Small Entity Subsidy	5.8

Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	<u>7.0</u>

\$63.2

The NRC is proposing to continue the existing policy for recovering the \$7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing licensees). The remaining \$56.2 million would be distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the \$63.2 million are as follows:

- \$55.2 million to operating power reactors;
- \$2.2 million to fuel facilities;
- \$.6 million to spent fuel storage licensees;
- \$.6 million to transportation licensees;
- \$.6 million to uranium recovery facilities; and
- \$4.0 million to other materials licensees.

III. Section-by-Section Analysis

The following analysis of those sections that are affected under this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions.

This section would be amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge Part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average cost per professional staff hour.

This section would be amended to establish two professional staff-hour rates based on FY 1995 budgeted costs--one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all fee categories that are based on full cost under \$170.21 is \$123 per hour, or \$214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials fee categories that are based on full cost under \$170.31 is \$116 per hour, or \$203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. As noted earlier in this proposed rule, the NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because these support costs are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

Table III
FY 1995 Budget Authority to be Included in Hourly Rates
(Dollars in millions)

<u>Salary and Benefits</u>	<u>Reactor Program</u>	<u>Materials Program</u>
Program	\$148.5	\$43.5
Allocated Agency Management & Support	<u>\$39.9</u>	<u>\$11.7</u>
Subtotal	\$188.4	\$55.2
<u>General and Administrative Support (G&A)</u>		
Program Travel and Other Support	\$13.3	\$2.7
Allocated Agency Management and Support	<u>\$73.6</u>	<u>\$21.6</u>
Subtotal	\$86.9	\$24.3
Less offsetting receipts	<u>.1</u>	<u>----</u>
Total Budget Included in Hourly Rate	\$275.2	\$79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	\$214,765	\$203,096
Professional Hourly Rate	\$123	\$116

Dividing the \$275.2 million budget for the reactor program

by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of \$214,765 per FTE for FY 1995. Dividing the \$79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of \$203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is \$123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs (\$214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs (\$203,096) by the number of productive hours in one year (1744 hours).

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

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in §170.20, for the reactor program and any direct program

support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in §170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in §170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of §170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by §170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export

Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, would be modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in §170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Those licensing fees, which are based on the average time to review an application ("flat" fees), would be adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from \$133 per hour in FY 1994 to \$116 per hour in FY 1995. The "flat" materials inspection fees in §170.31 would be eliminated and combined with the materials annual fees in §171.16(d). Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee would include the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed

its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments) and for inspections. The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing and inspection flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action or inspection for each license category. These average hours are multiplied by the proposed materials program professional hourly rate of \$116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is proposing to eliminate materials "flat" inspection fees, the biennial review examined only the average number of hours per licensing action with regard to the 10 CFR Part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine

the proposed fees for FY 1995 reflect the changes in the licensing program that have occurred since that time; for example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the proposed licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the proposed fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to the nearest \$10.

The proposed licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees would be assessed for applications filed on or after the effective date of the final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the proposed materials program hourly rate of \$116, as shown in §170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice.

The language in this section is revised to reflect when the NRC could more realistically expect to publish the proposed fee rule. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section will be revised to indicate that the NRC will publish the proposed rule (notice) in the Federal Register as early as is practicable but no later than the third quarter of the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section would be revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) would be revised to comply with the requirement of

OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the budgeted costs that have been allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one proposed uniform annual fee to be assessed to all operating reactors.

The NRC is proposing to streamline the fee program by assessing one uniform annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for

determining annual fees without causing an unfair burden. The NRC Office of the Inspector General (OIG) in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. The NRC for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The difference between the lowest fee under the current method and the uniform fee is about \$20,000, which is less than 1 percent of the \$3 million proposed annual fee for an operating power reactor. Because of this extremely small difference, the NRC believes that a single uniform annual fee should be established for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

Table IV

ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES^{1/}

	<u>Program Total</u>		<u>Allocated to Power Reactors</u>	
	<u>Program</u>	<u>Direct</u>	<u>Program</u>	<u>Direct</u>
	<u>(\$,K)</u>	<u>FTE</u>	<u>(\$,K)</u>	<u>FTE</u>
REACTOR PROGRAM				
<u>Cost Center: Reactor Regulation</u>				
Inspections	\$4,350	471.4	\$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	<u>536</u>	<u>42.0</u>
Cost Center Total			\$84,499	1,145.9

Table IV
(Continued)

	<u>Program Total</u>		<u>Allocated to Power Reactors</u>	
	<u>Program Support (\$,K)</u>	<u>Direct FTE</u>	<u>Program Support (\$,K)</u>	<u>Direct FTE</u>
<u>Cost Center: Standard Reactor Designs</u>				
Design Certification	\$6,873	91.6	\$6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	---	3.0	---	3.0
Independent Review	86	10.0	<u>86</u>	<u>10.0</u>
Cost Center Total			\$21,844	124.3
<u>NUCLEAR MATERIALS AND NUCLEAR WASTE PROGRAM</u>				
<u>Cost Center: Fuel Facilities</u>				
Licensing and Inspection	1,304	28.5	----	.1
<u>Cost Center: LLW & Decommissioning</u>				
Licensing and Inspection	50	2.6	----	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	---	<u>331</u>	<u>---</u>
Cost Center Total			\$431	7.6
<u>MANAGEMENT AND SUPPORT PROGRAMS</u>				
<u>Cost Center: Special Technical Programs</u>				
Educational Grants	\$1,050	---	\$1,050	---
Small Business Innovation Research	1,844	---	1,844	---
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	<u>850</u>	<u>.7</u>
Cost Center Total			<u>\$3,744</u>	<u>.7</u>
Reactor Program Total			\$110,518	1,278.6

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	\$385.0 million ^{2/}
LESS ESTIMATED PART 170 POWER REACTOR FEES	\$119.8 million
PART 171 AMOUNT FOR OPERATING POWER REACTORS	<u>\$265.2</u> million
PART 171 BASE FEE FOR EACH OPERATING REACTOR	265.2 <u>million</u> 108 reactors = \$2,456,000 per reactor

^{1/} Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE (\$214,765) and adding the program support funds.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) would be amended to show the amount of the budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA-90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

Table V

<u>Category of Costs</u>	<u>FY 1995 Budgeted Costs (\$ In Millions)</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities;	\$10.5
b. Agreement State oversight	6.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan activities not recoverable under 10 CFR Part 170	5.6

2.	Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based existing law or Commission policy:	
a.	Fee Exemption of nonprofit educational institutions;	6.1
b.	Licensing and inspection activities associated with other Federal agencies;	1.6
c.	Costs not recovered from Part 171 for small entities	5.8
3.	Activities supporting NRC operating licensees and Others	
a.	Regulatory support to Agreement States	\$14.2
b.	Decommissioning/Reclamation	<u>6.2</u>
	Total Budgeted Costs	\$63.2

Excluding low-level waste costs totalling \$7 million, the current policy allocates the remaining \$56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA-90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are

allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees would be allocated to a smaller number of materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

For the above reasons, the NRC is proposing to change the current policy for allocating the costs for activities which have raised fairness and equity concerns among many NRC licensees. The proposed changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go beyond the regulation of those licensees or applicants that pay fees. Thus,

the NRC proposes to allocate the costs in question to the entire population of NRC licensees that pay annual fees. The allocation would be based on the amount of the budget directly attributable to a class of licensees and would result in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This proposed change is consistent with the guidance in the Conference Committee Report that accompanied JBRA-90. First, by allocating these costs to all licensees, this proposed change is consistent with the Conference Report guidance that: "The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." Second, allocating a higher percentage of these costs to operating power reactors as opposed to other classes of licensees is also consistent with the Conference Report guidance that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitable and practicably contribute to their payment." Allocating these costs to the universe of NRC licenses would minimize the impact of the declining numbers of licenses in any specific class, because the costs would be allocated over the maximum number of licensees. It would also put in place both a policy that would help mitigate

future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

Generic LLW Cost Allocated = $.74 \times \$6,972K = \$5,159K$

Other Activities Allocated = $.89 \times \$56,229K = \$50,044K$

<u>Total budgeted costs allocated</u>	=	<u>\$55,203K</u>	=	\$511,000 per
Total number of operating reactors		108		operating power reactor

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, would pay a base annual fee of \$2,456,000 and an additional charge of \$511,000 for a total FY 1995 annual fee of \$2,967,000.

With respect to Big Rock Point, a smaller older reactor, the NRC proposes to grant a similar partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with §171.11.

Paragraph (d) would be revised to show, in summary form, the amount of the total FY 1995 annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1995 annual fee for nonpower (test and research) reactors. In FY 1995, \$339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of \$56,500 per operating license. The Energy Policy Act established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at §171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at §171.11(a)(2). The NRC amended §171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC intends to continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in §171.11.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The comment period expired December 30, 1994. The proposed size standards are as follows:

(a) A small business is a for-profit concern and is a --

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization

which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is --

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts to include "all revenue in whatever form received or accrued from whatever source . . . " (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

The NRC has evaluated the comments received on the proposed rule, prepared a draft final rule that will adopt these size standards and submitted the final rule for the approval of the Administrator, Small Business Administration, as required by

statute.

Pending SBA approval, the NRC intends to use these size standards in the final FY 1995 fee rule. Therefore, the small entity categories in §171.16(c) of this proposed fee rule have been modified to reflect the proposed changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is also proposing that a new maximum small entity fee for manufacturing industries with 35 to 500 employees be established at \$1,800 and a lower-tier small entity fee of \$400 be instituted for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of \$250,000 has been raised to \$350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from \$3.5 million to \$5 million.

Section 171.16(d) would be revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling \$42.8 million that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and

device registrations.

Tables VI and VII show the NRC programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

Table VI

ALLOCATION OF NRC FY 1995 BUDGET TO FUEL
FACILITY BASE FEES^{1/}

	Total Program Element		Allocated to Fuel Facility	
	Program Support \$,K	FTE	Program Support \$,K	FTE
<u>Cost Center: Fuel Facilities</u>				
Fuel Fabricators Oversight and Inspections	\$1,698	59.0	\$1,486	56.1
<u>Cost Center: LLW and Decommissioning</u>				
Decommissioning	4,447	50.0	325	1.7
<u>Cost Center: Other Nuclear Materials and Waste</u>				
Independent Analysis of Operating Experience	346	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	--	1.0	--	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
<u>Cost Center: Special Technical Program</u>				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	----
			=====	=====
TOTAL			\$2,066	61.9

TOTAL BASE FEE AMOUNT ALLOCATED TO FUEL FACILITIES			\$14.6 million ^{2/}	
LESS PART 170 FUEL FACILITY FEES			<u>4.5 million</u>	
PART 171 BASE FEES FOR FUEL FACILITIES			\$10.1 million	

^{1/} Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE (\$203,096) and adding the program support funds.

Table VII

ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES¹

	Total Program Element		Allocated to Materials Users	
	-----		-----	
	Program Support \$,K	FTE	Program Support \$,K	FTE

<u>Nuclear Materials & Nuclear Waste Program</u>				
<u>Cost Center: Materials Users</u>				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	\$700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection/Health Effects	1,621	5.3	<u>438</u>	<u>1.4</u>
Cost Center Total			\$1,751	87.7
<u>Cost Center: LLW & Decommissioning</u>				
Licensing & Inspections	50	2.6	---	.2
Decommissioning	214	32.8	69	3.5
Radiological Surveys	1,653	---	<u>372</u>	<u>---</u>
Cost Center Total			441	3.7
<u>Cost Center: Other Nuclear Materials</u>				
Analysis of Operational Experience	\$346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews	---	1.0	---	.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation	---	16.0	<u>---</u>	<u>4.4</u>
Cost Center Total			<u>\$691</u>	<u>32.4</u>
Total Program			\$2,883	123.8
<u>Management & Support Program</u>				
<u>Cost Center: Special Technical Programs</u>				
Nuclear Material Management & Safeguard Systems	1,165	1.0	<u>74</u>	<u>.1</u>
Total All Programs			\$2,957	123.9

BASE AMOUNT ALLOCATED TO MATERIALS USERS	\$28.1 million ^{2/}
LESS PART 170 MATERIAL USERS FEES	<u>3.2</u> million
PART 171 BASE FEES FOR MATERIAL USERS	\$24.9 million

^{1/} Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE (\$203,096) and adding the program support funds.

The allocation of the NRC's \$10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised by B&W Fuel Company, General Atomics and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore proposing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the proposed FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear type, enrichment, form, quantity, and use/associated activity) and according to the level scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to

each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid Part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear material and use/associated activity. Next, the category/license

information is used to determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	<u>Number of Facilities</u>	<u>Relative Weight Per Facility Safety</u>	<u>Safeguards</u>
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF ₆ Conversion	1	.30	----
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the \$10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

<u>Type of Facility</u>	<u>Proposed Annual Fee</u>
<u>High Enriched Fuel</u>	
Babcock & Wilcox	\$2,569,000
Nuclear Fuel Services	2,569,000
<u>Low Enriched Fuel</u>	
Combustion Engineering (Hematite)	1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
<u>Limited Operation Facilities</u>	
B&W Fuel Company	\$501,700
<u>UF₆ Conversion</u>	
AlliedSignal Corp.	\$639,200
<u>Other Fuel Facilities</u>	
Babcock & Wilcox	\$340,700
General Atomics	\$340,700
General Electric	\$340,700

Of the \$2.3 million (\$1.8 million in base budget plus \$0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately \$1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control

Act of 1978 (UMTRCA). In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing Part 171 annual fees for uranium recovery licenses. The methodology identifies three categories of licenses: (1) conventional uranium mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) the operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3)

cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	Number of <u>Facilities</u>	Relative Weight <u>Per Facility</u>
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal	3	.13

incidental to existing
tailings sites

Using this refined approach, the remaining \$0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2) - Class I facilities	\$60,900
2.A.(2) - Class II facilities	\$34,400
2.A.(2) - Other facilities	\$22,000
2.A.(3) - 11e(2) disposal	\$44,700
2.A.(4) - 11e(2) disposal incidental to existing tailings site	\$7,900

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this proposed rule. For rare earth facilities, the generic and other regulatory costs of \$66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of \$22,000 for each facility.

For spent fuel storage licenses, the costs of \$2.3 million (\$1.7 million in base budget plus \$0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an

ISFSI. This results in an annual fee of \$291,500 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this class.

To equitably and fairly allocate the \$24.9 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share (\$2.8 million) of the surcharge, the NRC has continued to base the annual fee on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

$$\text{Annual Fee} = (\text{Application Fee} + \text{Average Inspection Cost/Inspection Priority}) \times \text{Constant} + (\text{Unique Category Costs}).$$

The constant is the multiple necessary to recover \$27.7 million and is 2.2 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of

licensees. For FY 1995, unique costs of approximately \$1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is proposing to combine the "flat" material inspection fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171. This is being done to recognize that the "regulatory service" to licensees referred to in OBRA-90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA-90, the NRC believes that materials licensees' "flat" inspection fees could be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in effect, already been implemented for most materials licensees. First, materials licensees pay a "flat fee" per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials

license fee category pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. The proposed materials annual fees would become effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR Part 170 inspection fee for inspections conducted in FY 1995, would receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR Part 171. Those Agreement States licensees that paid an inspection fee would not receive a credit because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted costs to all NRC licensees rather than to materials licensees as discussed earlier. The professional hourly rate for the materials program has decreased from \$133 per hour to \$116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of

the average annual inspection costs with the annual fee. For example, if an inspection is performed every three years, one-third of the flat inspection fee would be included in the annual fee.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the \$4.7 million attributable to the transportation class of licensees, \$1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities (\$3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is \$77,800 for users and fabricators and \$1,000 for users only.

The amount or range of the proposed FY 1995 annual fees for all materials licensees is summarized as follows:

Materials Licenses
Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel	\$2,569,000
Part 70 - Low enriched fuel	\$1,261,000

Part 40 - UF ₆ conversion	\$639,200
Part 40 - Uranium recovery	\$22,000 to \$60,900
Part 30 - Byproduct Material	\$490 to \$23,400 ^{1/}
Part 71 - Transporta- tion of Radioactive Material	\$1,000 to \$77,800
Part 72 - Independent Storage of Spent Nuclear Fuel	\$291,500

^{1/} Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$417,700.

Section 171.16(e) would be amended to establish the additional charge which is included in the annual fees shown in Section 171.16(d) of this final rule. The Commission is continuing the approach used in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in Section 171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of \$7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that

dispose of LLW. The percentage distribution reflects the deletion of costs for LLW disposed of by Agreement State licensees. The FY 1995 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

<u>Category of Costs</u>	<u>FY 1995 Budgeted Costs (\$ In Millions)</u>
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities.	\$7.0

Of the \$7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount (\$5.7 million) are allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of \$48,000 per facility. Thus, the LLW charge will be \$48,000 per HEU, LEU, UF₆ facility, and each of the other three fuel facilities. The remaining \$1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: \$1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the \$1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is

\$21,000.

On the basis of this calculation, a fuel facility (a high-enriched fuel fabrication licensee, for example) pays an annual fee of \$2,546,000 and an additional charge of \$48,000 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of \$22,000 and an additional charge of \$1,400, for a total FY 1995 annual fee of \$23,400.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.19 Payment.

This section would be revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by

operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC also expects that certain materials licensees would have paid inspection fees for inspections that were performed in FY 1995, whereas the rule proposes to include such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. The NRC would adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is

a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was

developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of National Cable Television Association, Inc. v. United States, 415 U.S. 36 (1974) and Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory

Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held that--

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

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

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

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

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs

1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1995 budget of \$525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

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

When developing the annual fees for operating power

reactors, the NRC is proposing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in fees of about \$20,000 is small enough relative to the size of the \$3 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in Florida Power and Light Company v. United States, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in Skinner v. Mid-American Pipeline Co., 109 S. Ct. 1726 (1989), and the denial of certiorari in Florida Power and Light, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The proposed rule results in an decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

VIII. Backfit Analysis

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

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

List of Subjects

10 CFR Part 170 -- Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source Material, Special Nuclear Material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170, and 171.

PART 170 -- FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY

ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. In Section 170.11, paragraph (a) (5) is revised to read as follows:

Section 170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except where the Commission is authorized by statute to charge such fees.

3. Section 170.20 is revised to read as follows:

Section 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program	\$123 per hour
Nuclear Materials and Nuclear Waste Program	\$116 per hour

4. In Section 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

Section 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

Schedule of Facility Fees

(see footnotes at end of table)

Facility Categories and Type of Fees Fees^{1/} ^{2/}

J. Special Projects:^{4/}

Approvals and preapplication/licensing activities..Full Cost

Inspections^{3/} Full Cost

K. Import and export licenses:

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

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

Application-new license \$7,500

Amendment \$7,500

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

Application-new license	\$4,600
Amendment	\$4,600

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

Application-new license	\$2,900
Amendment	\$2,900

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

Application-new license	\$1,200
Amendment	\$1,200

5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not

require analysis or review.

Amendment \$120

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

100 percent capacity.

^{2/} Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

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

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

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

5. Section 170.31 is revised to read as follows:

Section 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

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

SCHEDULE OF MATERIALS FEES
(See footnotes at end of table)

<u>Category of materials licenses and type of fees^{1/}</u>	<u>Fee^{2/, 3/}</u>
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost
Inspections	Full Cost
B. Licenses for receipt and storage of spent	

fuel at an independent spent fuel storage
installation (ISFSI):

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- C. Licenses for possession and use of special
nuclear material in sealed sources contained
in devices used in industrial measuring
systems, including x-ray fluorescence
analyzers:^{4/}

Application - New license	\$530
Renewal	\$720
Amendment	\$290

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

Application - New license	\$580
Renewal	\$650

Amendment \$280

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

Application \$125,000

License, Renewal, Amendment . . . Full Cost

Inspections Full Cost

2. Source material:

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

License, Renewal, Amendment Full Cost
Inspections Full Cost

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

License, renewal, amendment Full Cost
Inspections Full Cost

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

License, renewal, amendment Full Cost
Inspections Full Cost

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

for shielding:

Application - New license	\$150
Renewal	\$170
Amendment	\$230

C. All other source material licenses:

Application - New license	\$2,700
Renewal	\$1,500
Amendment	\$400

3. Byproduct material:

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

Application - New license	\$2,900
Renewal	\$1,900
Amendment	\$530

B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this

chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	\$1,200
Renewal	\$2,400
Amendment	\$560

- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New license	\$3,900
Renewal	\$3,100
Amendment	\$500

- D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:

Application - New license	\$1,500
Renewal	\$480
Amendment	\$420

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

Application - New license	\$1,200
Renewal	\$820
Amendment	\$350

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

Application - New license	\$1,500
Renewal	\$1,100
Amendment	\$360

- G. Licenses for possession and use of 10,000 curies

or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$5,800
Renewal	\$5,200
Amendment	\$750

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

Application - New license	\$2,300
Renewal	\$2,700
Amendment	\$990

- I. Licenses issued pursuant to Subpart A of Part 32

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

Application - New license	\$4,300
Renewal	\$2,600
Amendment	\$840

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

Application - New license	\$1,500
Renewal	\$1,500
Amendment	\$280

- K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	\$1,300
Renewal	\$1,300
Amendment	\$300

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

Application - New license	\$4,100
Renewal	\$3,300
Amendment	\$640

- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize

commercial distribution:

Application - New license	\$1,500
Renewal	\$1,700
Amendment	\$590

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

Application - New license	\$1,800
Renewal	\$1,900
Amendment	\$570

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

Application - New license	\$3,700
Renewal	\$3,000
Amendment	\$700

- P. All other specific byproduct material licenses,

except those in Categories 4A through 9D:

Application - New license	\$530
Renewal	\$720
Amendment	\$290

4. Waste disposal and processing:

- A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:

License, renewal, amendment . . .	Full Cost
Inspections	Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for

the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New license	\$3,200
Renewal	\$2,300
Amendment	\$390

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

Application - New license	\$1,700
Renewal	\$1,200
Amendment	\$280

5. Well logging:

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

Application - New license	\$3,100
Renewal	\$4,000
Amendment	\$610

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

License, renewal, amendment . . .	Full Cost
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6. Nuclear laundries:

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

Application - New license	\$4,900
Renewal	\$1,900
Amendment	\$770

7. Human use of byproduct, source, or special nuclear material:

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

Application - New license	\$2,700
Renewal	\$1,400
Amendment	\$450

- 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	\$2,900
Renewal	\$5,700
Amendment	\$560

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

Application - New license	\$1,300
Renewal	\$1,400
Amendment	\$430

8. Civil defense:

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

Application - New license	\$730
Renewal	\$630
Amendment	\$340

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

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

Application - each device	\$3,200
Amendment - each device	\$1,200

- B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:

Application - each device \$1,600
Amendment - each device \$580

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

Application - each source \$700
Amendment - each source \$230

- D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:

Application - each source \$350
Amendment - each source \$120

10. Transportation of radioactive material:

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

Approval, Renewal, Amendment . . Full Cost

Inspections Full Cost

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

Application - Approval \$320
Renewal \$340
Amendment \$240
Inspections Full Cost

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

12. Special projects:^{5/}

Approvals and preapplication/
licensing activities Full Cost
Inspections Full Cost

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

Approvals Full Cost
Amendments, revisions, and

supplements Full Cost
Reapproval Full Cost

B. Inspections related to spent fuel storage
cask Certificate of Compliance Full Cost

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

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

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

15. Import and Export licenses:

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

A. Application for import or export of HEU and other

materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).

Application-new license	\$7,500
Amendment	\$7,500

- B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)-(8).

Application-new license	\$4,600
Amendment	\$4,600

- C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.

Application-new license	\$2,900
Amendment	\$2,900

- D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.

Application-new license	\$1,200
Amendment	\$1,200

E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.

Amendment	\$120
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16. Reciprocity:

Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of	
Form 241)	\$1,100
Renewal	N/A
Revisions	\$200

^{1/}Types of fees - Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed

sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of \$125,000.

(b) License/approval/review fees - Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) Renewal/reapproval fees - Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications

for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) Amendment/Revision Fees -

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) Inspection fees - Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with §170.12(g).

^{2/}Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or

hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

^{3/}Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by \$170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional

hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20. The minimum total review cost is twice the hourly rate shown in §170.20.

^{4/}Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except 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.

^{5/}Fees will not be assessed for requests/reports submitted to the NRC:

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

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule,

regulatory guide, policy statement, generic letter, or bulletin;
or

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

PART 171 -- ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows:

Section 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the Federal Register as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with §171.19 except as provided in §171.17. Quarterly payments of the annual fees of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In §171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

Section 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in §171.11(a)(1) and (a)(2).

(b) ***

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is \$2,456,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor. The amount of the surcharge is the sum of the budgeted costs for each FY for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and approximately 82 percent of the low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be

collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The FY 1995 surcharge to be added to each operating power reactor is \$511,000. This amount is calculated by dividing the total cost for these activities (\$55.2 million) by the number of operating power reactors (108).

(d) The FY 1995 Part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c)(2) of this section, is \$2,967,000. Thereafter, annual fees will be assessed in accordance with §171.13.

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

Research reactor	\$56,500
Test reactor	\$56,500

9. In §171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

Section 171.16 Annual Fees: Materials Licensees, Holders of
Certificates of Compliance, Holders of Sealed Source and Device
Registrations, Holders of Quality Assurance Program Approvals and
Government agencies licensed by the NRC.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

<u>Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$350,000 to \$5 million	\$1,800
Less than \$350,000	\$400
<u>Manufacturing entities that have an average of 500 employees or less</u>	
35 to 500 employees	\$1,800
Less than 35 employees	\$400
<u>Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)</u>	
20,000 to 50,000	\$1,800
Less than 20,000	\$400

Educational Institutions that
are not State or Publicly
Supported, and have 500 Employees
or Less.

35 to 500 employees	\$1,800
Less than 35 employees	400

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is \$1,800 for each category applicable to the license(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC
(See footnotes at end of table)

<u>Category of materials licenses</u>	<u>Annual Fees</u> ^{1, 2, 3}
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1. Special nuclear material:

A. (1) Licenses for possession and use

of U-235 or plutonium for fuel
fabrication activities.

a) Strategic Special Nuclear Material

License No.

Babcock & Wilcox	SNM-42	\$2,569,000
Nuclear Fuel Services	SNM-124	2,569,000

b) Low Enriched Uranium in Dispersable Form Used for
Fabrication of Power Reactor Fuel

Combustion Engineering (Hematite)	SNM-33	\$1,261,000
General Electric Company	SNM-1097	1,261,000
Siemens Nuclear Power	SNM-1227	1,261,000
Westinghouse Electric Company	SNM-1107	1,261,000

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

a) Facilities with limited operations:

B&W Fuel Company	SNM-1168	\$501,700
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b) All Others:

Babcock & Wilcox	SNM-414	\$340,700
General Atomics	SNM-696	340,700
General Electric	SNM-960	340,700

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). \$291,500
- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. \$1,300
- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2). \$3,000
- E. Licenses for the operation of a uranium enrichment facility. \$ N/A^{11/}

2. Source material:

- A.(1) Licenses for possession and use of source material for refining uranium

mill concentrates to uranium
hexafluoride.

\$639,200

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

Class I facilities⁴ \$60,900

Class II facilities⁴ \$34,400

Other facilities \$22,000

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

disposal, except those licenses subject to the fees in
Category 2.A.(2) or Category 2.A.(4). \$44,700

- (4) Licenses that authorize the receipt, from other
persons, of byproduct material as defined in Section
11e(2) of the Atomic Energy Act for possession and
disposal incidental to the disposal of the uranium
waste tailings generated by the licensee's milling
operations, except those licenses subject to the fees
in Category 2.A.(2). \$7,900

B. Licenses which authorize only the
possession, use and/or installation of
source material for shielding. \$490

C. All other source material licenses. \$8,700

3. Byproduct material:

A. Licenses of broad scope for possession
and use of byproduct material issued
pursuant to Parts 30 and 33 of this
chapter for processing or manufacturing
of items containing byproduct material
for commercial distribution. \$16,500

- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. \$5,500
- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$11,200
- D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving

processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$4,400

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). \$3,200

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$3,800

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for

irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$19,600

H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. \$5,000

I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter,

except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. \$8,800

J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. \$3,800

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

authorizing redistribution of items
that have been authorized for distribution
to persons generally licensed under
Part 31 of this chapter. \$3,200

L. Licenses of broad scope for possession
and use of byproduct material issued
pursuant to Parts 30 and 33 of this
chapter for research and development
that do not authorize commercial
distribution. \$12,200

M. Other licenses for possession and use
of byproduct material issued pursuant
to Part 30 of this chapter for research
and development that do not authorize
commercial distribution. \$5,400

N. Licenses that authorize services for
other licensees, except (1) licenses that
authorize only calibration and/or leak
testing services are subject to the fees
specified in fee Category 3P, and (2)
licenses that authorize waste disposal
services are subject to the fees specified
in fee Categories 4A, 4B, 4C, and

4D.

\$6,000

- O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license. \$14,000
- P. All other specific byproduct material licenses, except those in Categories 4A through 9D. \$1,700

4. Waste disposal and processing:

- A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of

nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. \$101,600^{5/}

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. \$14,400

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

dispose of the material. \$7,600

5. Well logging:

A. Licenses for possession and use of
byproduct material, source material,
and/or special nuclear material for well
logging, well surveys, and tracer
studies other than field flooding
tracer studies. \$8,100

B. Licenses for possession and use of
byproduct material for field flooding
tracer studies. \$13,100

6. Nuclear laundries:

A. Licenses for commercial collection and
laundry of items contaminated with
byproduct material, source material,
or special nuclear material. \$14,600

7. Human use of byproduct, source, or special nuclear
material.

A. Licenses issued pursuant to Parts 30,

35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. \$10,200

- B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.^{9/} \$23,300

- C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct

material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.^{9/} \$4,700

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. \$1,800

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

A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. \$7,200

- B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices. \$3,700
- C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. \$1,600
- D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. \$780

10. Transportation of radioactive material:

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

Spent Fuel, High-Level Waste, and N/A^{6/}
plutonium air packages

Other Casks N/A^{6/}

B. Approvals issued of 10 CFR Part 71
quality assurance programs.

Users and Fabricators \$77,800

Users \$1,000

11. Standardized spent fuel facilities. N/A^{6/}

12. Special Projects N/A^{6/}

13. A. Spent fuel storage cask Certificate N/A^{6/}
of Compliance.

B. General licenses for storage of \$291,500
spent fuel under 10 CFR 72.210.

14. Byproduct, source, or special nuclear N/A^{2/}
material licenses and other approvals

authorizing decommissioning, decontamination,
reclamation, or site restoration activities
pursuant to 10 CFR Parts 30, 40, 70, and 72.

- | | |
|---|----------------------------|
| 15. Import and Export licenses | N/A ^{8/} |
| 16. Reciprocity | N/A ^{8/} |
| 17. Master materials licenses of broad scope issued to Government agencies. | \$417,700 |
| 18. Department of Energy: | |
| a. Certificates of Compliance | \$1,200,000 ^{10/} |
| b. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities | \$1,937,000 |

^{1/} Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license or for a POL during the fiscal year and for new licenses

issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license and licensees paying annual fees under Category 2.A(2) are not subject to the annual fees for Category 4.D.

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

^{3/} For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

^{4/} A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued

for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

^{5/} Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

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

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

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

^{9/} Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

^{10/} This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

^{11/} No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of \$48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of \$21,000 has been added to fee Category 17.

(2) To recover these budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals a surcharge has been added for the following:

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

(SDMP) activities and

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

10. In Section 171.19, paragraphs (b) and (c) are revised to read as follows:

Section 171.19 Payment.

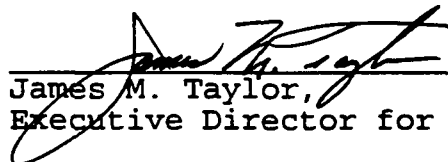
(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be

sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of \$100,000 or more and described in the Federal Register notice pursuant to §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than \$100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 10th day of March, 1995.

For the Nuclear Regulatory Commission.


James M. Taylor,
Executive Director for Operations.

APPENDIX A TO THIS PROPOSED RULE
REGULATORY FLEXIBILITY ANALYSIS FOR THE
AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND
10 CFR PART 171 (ANNUAL FEES)

I. Background.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based

size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The NRC proposed to adjust its receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA rule. The NRC also proposed to eliminate the separate \$1 million size standard for private practice physicians and to apply a receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that hold an NRC license. The final rule that would revise the NRC's size standards has been sent to the SBA for review and approval. The NRC intends to adopt the revised standards in the final FY 1995 fee rule. The small entity fee categories in §171.16(c) of this proposed rule have been modified to reflect the proposed changes in the size standards. It is proposed that a new maximum small entity fee for manufacturing industries with 35 to 500 employees be established at \$1,800 and a lower-tier small entity fee of \$400 be established for those manufacturing industries with less than 35 employees. The receipts-based lower-tier of \$250,000 has been raised to \$350,000 to maintain the lower-tier at the same relative amount of the new small entity size standard

of \$5 million. The NRC proposed size standards are as follows:

(a) A small business is a for-profit concern and is a--

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is --

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or

fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts to include "all revenues in whatever form received or accrued from whatever source . . . " (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA-90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately \$445 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million; for FY 1994 about \$499.6 million and the amount to be collected in FY 1995 is approximately \$503.6 million.

To comply with OBRA-90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) and in FY 1994 (59 FR 36895; July 20, 1994) based on a careful evaluation of over 1,000

comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993 and FY 1994 rulemakings to establish the proposed fees to be assessed for FY 1995 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is proposing the use of cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also proposing: (1) to change the method for allocating the budgeted costs (about \$56 million) that cause fairness and equity concerns; (2) eliminate the materials "flat" inspection fees in 10 CFR 170.31 and include the inspections with the annual fees in 10 CFR 171.16(d); and (3) establish two professional hourly rates to better align the budgeted costs with the major classes of licensees. For FY 1995, the methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1995 final rule.

II. Impact on small entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

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

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

- Large firms would gain an unfair competitive advantage

over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

- Some firms would be forced to cancel their licenses. One commenter, with receipts of less than \$500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

- Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

- Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the \$3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars.

These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993) and in the FY 1994 rule (59 FR 36895; July 20, 1994). The alternatives considered by the NRC can be summarized as follows.

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

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that

reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be received from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license and inspection fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of \$1,800 be continued.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small

entities, pay for most of the FY 1995 costs (\$27.1 million of the total \$32.9 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

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

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

III. Summary.

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a proposed maximum annual fee of \$1,800 for small entities and a proposed lower-tier small entity annual fee of \$400 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported

and have less than 35 employees will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this proposed rule except those noted in Section II, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991, FY 1992, FY 1993, and FY 1994 rules remain valid for this proposed rule for FY 1995.