

November 13, 1996

Caleb Loring, III, Edward J. Sullivan, and
David Richardson, Co-Executor
(Estate of Michael P. Grace, II)
c/o Magasinn & Magasinn
4640 Admiralty Way, Suite 402
Marina del Rey, CA 90292

Gentlemen:

As you know, Michael P. Grace, II, was the holder of a materials license issued by the Nuclear Regulatory Commission (License No. SUA-1480). The NRC's regulations in 10 CFR 170, copy enclosed, provide that fees be assessed for applications for amendments to materials licenses as well as for any inspections conducted. License No. SUA-1480 is classified in fee category 14 of 10 CFR 170.31 and therefore subject to full cost fee recovery for amendments and inspections.

In accordance with 10 CFR 170.12(c) and (g), invoices will be issued to you on a quarterly basis for professional staff time expended and contract costs incurred for any application reviews and inspections for License SUA-1480. Although the invoices will be due on the invoice dates, the NRC will extend the interest waiver period until the site reclamation is complete. At that time all fees assessed would be due. It is expected that these fees would be paid from the remaining funds of the Estate.

If you have any question regarding this matter, please feel free to contact me at 301-415-6057.

Sincerely,

Signed by
Glenda C. Jackson

Glenda C. Jackson, Chief
License Fee Section
License Fee and Accounts Receivable Branch
Division of Accounting and Finance
Office of the Controller

Enclosure: 10 CFR 170

Distribution:

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NOTICE OF ADMINISTRATION *
OF THE ESTATE OF

MICHAEL PAUL GRACE, II also known as MICHAEL P. GRACE
(NAME)

DECEDENT

NOTICE TO CREDITORS

CC to Sonner

Send invoices + ltr re: fees to:

1. (Name): **CALEB LORING, III, EDWARD J. SULLIVAN & DAVID RICHARDSON,**
(Address): **C/o MAGASINN & MAGASINN**
4640 Admiralty Way, Suite 402
Marina del Rey, CA 90292 Co-Executors

(Telephone): (310) 301-3545 Fax (310) 301-0035
is the **personal representative** of the **ESTATE OF** (name): **MICHAEL PAUL GRACE, II**, who is deceased

2. The personal representative HAS BEGUN ADMINISTRATION of the decedent's estate in the

a. **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** (specify): **LOS ANGELES**

STREET ADDRESS: **111 NORTH HILL STREET**

MAILING ADDRESS: **SAME**

CITY AND ZIP CODE: **LOS ANGELES, CA 90012**

BRANCH NAME: **CENTRAL DISTRICT**

b. Case number (specify): **BP 035 539**

3. You must **FILE YOUR CLAIM** with the court clerk (address in item 2a) AND mail or deliver a copy to the personal representative before the **later** of the following times as provided in section 9100 of the California Probate Code:

a. **four months** after (date): **August 15, 1995**, the date letters (authority to act for the estate) were first issued to the personal representative, OR

b. **thirty days** after (date): **September 10, 1996**, the date this notice was mailed or personally delivered to you.

4. **LATE CLAIMS:** If you do not file your claim before it is due, you must file a petition with the court for permission to file a late claim as provided in section 9103 of the Probate Code.

WHERE TO GET A CREDITOR'S CLAIM FORM: If a creditor's claim form did not accompany this notice, you may obtain a copy from any superior court clerk or from the person who sent you this notice. (Creditor's Claim, Judicial Council form No. DE-172.) A letter to the court stating your claim is not sufficient.

IF YOU MAIL YOUR CLAIM: If you use the mail to file your claim with the court, for your protection you should send your claim by certified mail, with return receipt requested. If you mail a copy of your claim to the personal representative, you should also use certified mail.

NOTE: To assist the creditor and the court, please send a copy of the Creditor's Claim form with this notice.

(Proof of Service on reverse)

NOTICE OF ADMINISTRATION TO CREDITORS

[Optional]

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (specify):
4640 Admiralty Way, Suite 402
Marina del Rey, CA 90292
3. I served the foregoing Notice of Administration of Creditors ☒ and a blank Creditor's Claim form^{*} on each person named below by enclosing a copy in an envelope addressed as shown below AND:
- a. ☐ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid
- b. ☒ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with the business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

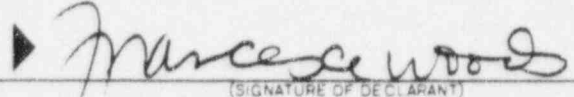
4. a. Date of deposit: September 10, 1996 b. Place of deposit (city and state): Marina del Rey, California

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 10, 1996

Francesca M. Woods

(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Robert Fonner
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

^{*} NOTE: To assist the creditor and the court, please send a copy of the Creditor's Claim form with the notice.

Rules and Regulations

Federal Register

Vol. 61, No. 72

Friday, April 12, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AF39

Revision of Fee Schedules; 100% Fee Recovery, FY 1996

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1996 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1996 is approximately \$462.3 million.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW., (Lower Level), Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Responses to Comments.
- III. Final Action.
- IV. Section-by-Section Analysis.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.
- IX. Backfit Analysis.

I. Background

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

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

On June 20, 1995 (60 FR 32218), the NRC published its final rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund. The NRC stated in the FY 1995 final rule that in an effort to stabilize annual fees, beginning in FY 1996, the NRC would adjust the annual fees by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also stated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other receipts as well as on the number of licensees paying fees.

On January 30, 1996 (61 FR 2948), the NRC published a proposed rule to establish the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its

budget authority for FY 1996, less the appropriation received from the Nuclear Waste Fund. Several changes were proposed by the NRC to the fees to be assessed for FY 1996. These changes were highlighted in the proposed rule (61 FR 2948; January 30, 1996). The major changes are summarized as follows:

1. Stabilize 10 CFR Part 171 annual fees by adjusting all annual fees downward by about 6 percent. This change is consistent with the NRC's intention, stated in the FY 1995 final rule, that annual fees would be stabilized, beginning in FY 1996, by adjusting the FY 1995 annual fees by the percent change (plus or minus) in the NRC budget authority taking into consideration the estimated collections from 10 CFR Part 170 fees and the number of licensees paying fees;

2. Assess 10 CFR Part 171 annual fees of less than \$100,000 to materials licensees on the anniversary date of the license. This change continues the streamlining of fees and allows the NRC to make the billing process more efficient by distributing the billing and collection of annual fees over the entire year. The current practice is to bill over 6,000 materials licensees at the same time during the fiscal year;

3. Eliminate the materials "flat" renewal fees in 10 CFR 170.31 and include the costs of the renewals in the annual fees in 10 CFR 171.16(d) for the affected licensees. This change continues the simplification of fees initiated in FY 1995 and is consistent with NRC's recent Business Process Reengineering initiatives to extend the duration of certain materials licenses (61 FR 1109; January 16, 1996);

4. Revise the two professional hourly rates in 10 CFR 170.20 which are used to determine the Part 170 fees assessed by the NRC. The rate for FY 1996 for the reactor program is \$128 per hour and the rate for the materials program is \$120 per hour; and

5. Adjust the 10 CFR 170.21 and 170.31 licensing (application and amendment) "flat" fees for materials licenses to reflect the costs of providing the licensing services.

II. Responses to Comments

The NRC received eight comments on the proposed rule. Although the comment period ended on February 29, 1996, the NRC has reviewed and

evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Comments Regarding the Major Changes Proposed in the FY 1996 Fee Rule

1. Streamline and Stabilize Annual Fees

Comment. All commenters responding to this proposed change were encouraged by and supported the positive steps taken by NRC to equitably distribute and to reduce the burden of user fees on licensees. Several commenters indicated that this change represents a greater simplification and streamlining of the fee setting procedures and has eliminated the dramatic swings in NRC fees seen in the past. Commenters stated that the approximate 6 percent reduction in annual fees for all licensees is evidence of this. Other commenters stated that the NRC should continue the process of streamlining and commensurate fee reduction because it is a responsible approach in light of today's highly competitive global nuclear marketplace.

Response. Consistent with the comments, the final rule adopts the methodology to streamline and stabilize FY 1996 annual fees by adjusting these fees by the percentage change (plus or minus) in NRC's total budget authority. The FY 1995 annual fees have been used as base annual fees and these annual fees have been adjusted downward for FY 1996 based on the percentage change in the NRC's budget authority, taking into consideration the total number of licensees paying fees and estimated collections from 10 CFR Part 170 licensing and inspection fees. Therefore for FY 1996, all annual fees have been adjusted 6.5 percent below the FY 1995 levels.

2. Assess Annual Fees of Less Than \$100,000 to Materials Licensees on the Anniversary Date of License

Comment. Commenters supported the NRC's proposal to invoice materials annual fees of less than \$100,000 on the anniversary date of the license. Commenters stated that, while helping to assist NRC in its billing efforts, it will also provide some relief to entities who have several licenses. The proposed system will allow these licensees to distribute their cash outlays over a longer period of time easing the financial stresses caused by a single payment period.

Response. Consistent with the comments, the NRC in this final rule will assess § 171.16(d) annual fees for those materials licenses whose annual fees are less than \$100,000 based on the anniversary of the date the license was originally issued. Accordingly, a new paragraph is added to § 171.19. For FY 1996, those affected materials licenses with a license anniversary date between October 1, 1995, and the effective date of this final FY 1996 fee rule will be billed upon publication of the final rule in the *Federal Register* and annually thereafter during the anniversary month of the license. Those affected materials licenses whose license anniversary date is on or after the effective date of this final FY 1996 fee rule will be billed during the anniversary month of the license and annually thereafter based on the annual fee in effect at the time of billing. The specific license categories of materials licensees affected by this change are listed in § 171.19(d) of this final rule.

3. Revise the Two Professional Rates in 10 CFR 170.20 Based on the FY 1996 Budget and Adjust the 10 CFR 170.21 and 170.31 Licensing (Application and Amendment) "Flat" Fees for Licenses to Reflect the Costs of Providing the Licensing Services

Comment. Commenters supported the revised method of calculating two hourly rates adopted by NRC in FY 1995 to separately, and more equitably, allocate costs associated with the reactor program and the materials program. Commenters stated that the two rates, based on cost center concepts that identify and allocate budgeted resources, is inherently fairer and more equitable to licensees and is more consistent with Congressional intent to identify and properly assess fees to those entities that utilize NRC resources and regulatory services. However, some commenters indicated that, while they are pleased that the materials rate increase is under 4 percent (\$116 per hour to \$120 per hour) and generally in keeping with inflation, the rate itself is unjustifiably high. These commenters stated that the \$120 hourly rate equals or exceeds the hourly rate of senior consultants or principals at major (national) consulting companies and that it exceeds the accepted rate for similar work in private industry. Some commenters pointed out the increase in the hourly rates exceeds the general increase that was provided to all Federal government workers on January 1, 1996, and they encourage the NRC to control its costs by seeking efficiencies in order to attain a downward trend of licensing and inspection fees comparable to that

being realized in the annual fees. Other commenters indicated that the average cost per staff hour assumes a lower number of work hours relative to that commonly applied in industry and a multiplier which would appear to significantly exceed those commonly enjoyed by private industry. Some commenters stated that although summary calculations are presented in the proposed revisions, insufficient detail is provided to determine the justification for an increase in the hourly fees, i.e., the NRC has not listed the assumptions used in forecasting the predicted FTEs (full time equivalents) considered necessary for the materials program.

Response. Consistent with the comments, the NRC has established in this final rule two professional hourly rates for FY 1996 which will be used to determine the 10 CFR Part 170 fees. A rate of \$128 per hour is established in § 170.20 for the reactor program and a second rate of \$120 per hour is established in § 170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the "cost center" concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA-90. The rates reflect the NRC budgeted cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of \$128 and \$120 are discussed in detail in Part III, Section-by-Section Analysis, relating to § 170.20 of the proposed rule (61 FR 2951; January 30, 1996) and the same section of this final rule. For example, Table II shows the budgeted costs and the direct FTEs that must be recovered through fees assessed for the hours expended by the direct FTEs. The budgeted costs as well as the direct resources are those required by the NRC to implement its statutory responsibilities and effectively accomplish the mission of the agency. Additional information on the hourly rates is provided in the NRC workpapers located in the Public Document Room. The specific details regarding the budget for FY 1996 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1996-1997" (NUREG-1100,

Volume 11), which is available to the public. Copies of NUREG-1100, Volume 11, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555-0001.

B. Other Comments

1. Public Interest Exemptions

Comment. Commenters supported NRC's decision to continue to charge annual fees to Federal agencies and to deny their requests for exemption based on "public good" claims.

Response. Consistent with the proposed rule and the comments received, the NRC does not intend to grant public good exemptions to Federal agencies.

2. Fee Legislation

Comment. Several commenters noted that the NRC had completed its report on fee policy as required by the Energy Policy Act of 1992 and that the NRC had sent a report to Congress with legislative recommendations. The commenters commended NRC's efforts in this regard and stated that they continue to believe that 100 percent fee recovery for NRC, as mandated by OBRA-90, is inequitable and unfair to licensees because licensees are paying for certain costs that are not directly related to and do not benefit them. The commenters acknowledged that without legislative changes to OBRA-90, the central problems with NRC's fees cannot be completely resolved. Commenters strongly supported more efforts to define a more equitable fee base and recommended that the NRC continue to work with Congress and the Administration to obtain the necessary legislative changes. In this regard, commenters stated that it is time for NRC to actively pursue a legislative agenda with Congress by drafting specific language to modify OBRA-90 or the Atomic Energy Act.

Response. The need for legislation is beyond the scope of this rulemaking proceeding. As indicated in the FY 1995 final rule (60 FR 32218; June 20, 1995), the NRC will continue to work with the Congress to make fees more fair and equitable.

3. Reexamine the Issue of Fees

Comment. Some commenters stated that both Congress and the NRC should

reexamine the whole issue of fees in the context of the substantial concerns of licensees regarding the trend of more states entering into the Agreement State program. These commenters refer to the stated intentions of Pennsylvania, Ohio, Massachusetts, and Oklahoma to become Agreement States. The commenters indicated that the NRC would then lose about 30 percent of the existing license base and fees would significantly increase unless other budgeting methods are approved or the number of FTEs is reduced in proportion to the reduction in the number of licensees.

Commenters from the uranium recovery industry also indicated that, as the uranium recovery industry continues to shrink in size, the decreasing number of licensees will ultimately be charged increasing annual fees thereby forcing more financial hardships on an already depressed industry. Commenters state that the current system gives preferential treatment to licensees in Agreement States. One commenter suggested that the NRC should enter into reimbursable agreements with the Agreement States before FY 1997, as stated in the FY 1995 final rule. In addition, one commenter believes that NRC should assess the Environmental Protection Agency (EPA) for NRC work such as review of regulations promulgated by EPA relating to radionuclide emission standards.

Response. In FY 1995, the NRC changed the methodology for allocating those budgeted costs (about 10 percent of the NRC budget authority) that cause fairness and equity concerns because the legislation requested by the NRC had not been passed by the Congress (60 FR 32218; June 20, 1995). These costs, which include the cost of the Agreement State oversight and regulatory support to the Agreement States, are now treated in a manner similar to overhead. These costs are distributed based on the percentage of the budget directly attributable to a class of licensees. Commenters at that time supported this method of allocation as being more equitable, pending legislative relief by Congress to remedy this inequitable situation. If additional states become Agreement States and the NRC decides to rebaseline the fees based on substantive changes to the budget, then any increased cost for Agreement State oversight and regulatory support to the Agreement States would be identified, treated similar to overhead, and distributed based on the percentage of the budget directly attributable to a class of licensees.

The NRC also revised its methodologies in the FY 1995 final rule

for determining annual fees for fuel facility and uranium recovery licensees. The revised methodologies resulted in annual fees that more accurately reflect the costs of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. The revised methodologies were fully explained in Section IV, Section-by-Section Analysis, of the final FY 1995 rule (60 FR 32218; June 20, 1995).

In response to comments relative to annual fee increases as a result of the decrease in the number of licensees, the changes adopted in the FY 1995 final rule to stabilize fees should minimize large fee changes as a result of decreases in licensees. This is substantiated by this final FY 1996 rule which reduces all annual fees by the percent change to the FY 1995 levels.

The NRC indicated in the FY 1995 proposed rule (60 FR 14672; March 20, 1995) that it planned to increase the use of reimbursable agreements with Agreement States and Federal agencies beginning in FY 1997. To this end, the NRC has begun this process for Federal agencies. For example, in FY 1995 the NRC entered into reimbursable agreements with the National Aeronautics and Space Administration (NASA) for the Cassini mission and the Department of Energy (DOE) for plutonium disposition. Reimbursable agreements with Agreement States, however, continue to generate strong responses, both positive and negative, on the part of licensees and Agreement States.

With respect to the interaction between the NRC and EPA on the promulgation of regulations, NRC interactions with EPA are an integral part of NRC's responsibilities under the Atomic Energy Act. Therefore, NRC must include the costs of this work in its budget and cannot perform such work under reimbursable agreements. In addition, the Independent Offices Appropriation Act of 1952, as amended, precludes the NRC from charging fees to Federal agencies for specific services rendered. While the NRC can assess annual fees to Federal agencies holding NRC licenses, the EPA is not considered a licensee of the NRC with respect to regulations promulgated by EPA relating to radionuclide emission standards.

4. Fees Based on Other Factors

Comment. One commenter indicated that NRC fees should take into consideration the competitive condition of certain markets and the effect of fees on domestic and foreign competition. For example, the commenter suggested that the NRC assess a small fee, such as \$5.00 per pound, on imported uranium

to help offset the NRC budget and that OBRA-90 be amended to include this provision. In addition, the commenter suggested that a fee be added to foreign Separative Work Units (SWUs) used by U.S. utilities to enrich uranium. The commenter indicated that these fees, if levied, would not only solve part of the NRC's financing problems, but would also "rejuvenate the domestic uranium mining, milling, and enrichment businesses." Another commenter believes that NRC should give full consideration to the effects of imposing significant annual fees on the domestic uranium recovery industry particularly in light of the Secretary of Energy's determination that the industry is non-viable and the requirement of the Atomic Energy Act that the country maintain a viable domestic source material industry to sustain vital national interests.

Response. OBRA-90 requires that the fees assessed to licensees have a reasonable relationship, to the maximum extent practicable, to the cost of providing the service. The IOAA requires that licensing fees be based on the cost of the services rendered. Consistent with these requirements, the NRC assesses licensing fees for import licenses. Basing fees on market competitive positions or assessing a \$5.00 per pound surcharge on imported uranium would not be consistent with these statutes. The issue of adverse economic impact of fees on NRC licensees was addressed in the FY 1991 final rule published July 10, 1991 (56 FR 31476). The NRC indicated that there will be adverse impacts from implementing the legislation and to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. The issues of basing fees on market competitive positions, the amount of material possessed, the frequency of use of the material, and the size of the facilities, were also addressed by the NRC in previous rules and in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). The NRC did not adopt that approach because it would require licensees to submit large amounts of new data and would require additional NRC staff to evaluate the data submitted and to develop and administer even more complex fee schedules. The NRC continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee within a class to determine the amount of the annual fee is a fair, equitable, and practical way to recover those costs and that establishing reduced annual fees

based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, the NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993 decision in *Allied-Signal*.

5. Comment

Several comments were received from uranium recovery licensees suggesting: (1) A tiered fee system that would result in full fees for operating facilities and reduced fees for facilities in shutdown or standby status; (2) a licensee review board be established to review NRC fees annually; (3) the NRC establish standards for its activities, such as a schedule for response intervals for processing licensing actions; and (4) 10 CFR Part 170 bills for services rendered be itemized to show hours spent, a description of the work performed, the names of individuals who completed the work and the dates the work was performed.

Response. In response to a petition of rulemaking from the American Mining Congress (now the National Mining Association) the NRC addressed each of these comments in the *Federal Register* on April 28, 1995 (60 FR 20918-20922). For the reasons provided in response to the petition, the NRC is not adopting the suggestions from the commenters in this final rule. While denying the petition, the NRC noted that it would continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the licensee or applicant.

6. Relationship Between Fees and Regulatory Services

Comment. Several commenters indicated that although they appreciate NRC's efforts to stabilize fees, they have concerns about the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from such services. The commenters assert that the Commission cannot impose fees under the IOAA unless there is a rational relationship between the fees and the regulatory services provided. The commenters, citing *Central & S. Motor Freight Tariff Ass'n v. United States*, 777 F.2d 722, 729 (D.C. Cir. 1985), note that in applying this IOAA requirement, the fees assessed must be reasonably related to, and may not exceed the value of the service to the recipient whatever the agency's cost may be. The commenters then suggest that the NRC fee system may violate this principle because the proposed hourly rate of \$120 for

services provided by agency professionals is unduly high.

Response. The Commission believes that its IOAA fee schedule is fully supported by applicable legal precedent and does not adopt commenters' suggestion. In upholding the Commission's IOAA fee schedule, the United States Court of Appeals for the Fifth Circuit held that the NRC may recover the full cost of providing a service to an identifiable recipient. (Emphasis in original) *Mississippi Power & Light v. NRC*, 601 F.2d at 230. This is consistent with the earlier teaching of *National Cable Television Ass'n Inc. v. FCC*, 554 F.2d 1094, 1106 (D.C. 1976) relied upon by the court in *Central & S. Motor Freight Tariff Ass'n*, *supra*. There the court held that fees should be a reasonable approximation of the attributable costs which the Commission identifies as being expended to benefit the recipient. The Court suggested that a fee might be questionable if the fee unreasonably exceeds the value of the specific services for which it is charged. Here the services provided by the NRC are required for licensees to maintain their licenses and the benefits derived therefrom. The basis for the revised hourly rates is fully discussed in NRC's response to comment A.3, which relate to the hourly rates being assessed by NRC under 10 CFR Part 170. The commenters have provided virtually no evidence that could cause the NRC to conclude that its fees unreasonably exceed the value of the services rendered.

7. Competitive Bids by Contractors

Comment. Two commenters indicated that to control costs government agencies routinely require competitive bids for contract labor. The commenters stated that costs incurred by the Oak Ridge National Laboratory (ORNL) are considered by many licensees to be excessive, yet NRC awards contracts to ORNL on an apparently sole source basis. The commenters suggest that NRC consider as large a pool as possible for potential contractors including both government laboratories and private consultants when seeking contract labor.

Response. The NRC is committed to making its regulatory programs more efficient and effective wherever it can do so without diminishing its ability to protect the public health and safety. The NRC follows accepted contracting practices in all contract awards. Before determining whether to place work with a commercial source under the competitive proposal process or with a DOE laboratory, the NRC considers the

type of work to be done, the expertise required, and the past performance of the contractor. If the NRC determines that commercial sources are appropriate to perform the work and that conflict of interest can be avoided, a competitive procurement may be initiated. Otherwise, a DOE laboratory may be selected to perform the work. Costs are routinely considered and negotiated in either case.

Costs for particular actions are also affected by the quality of the licensee submittal, the timeliness and quality of licensee responses to NRC questions, delays caused by external factors, the complexity of the site, and the degree of cooperation by the licensee with NRC.

8. Regulatory Deficiencies

Comment. Two commenters indicated that the proposed rule has no provision for allowing licensees to object to unreasonable costs. The commenters stated that without such a mechanism, licensees are at the mercy of the regulators and are expected to pay for services billed and that there is no assurance that any given regulatory function performed by the NRC will be completed expeditiously, efficiently, or within a reasonable range of cost.

Response. While the NRC is committed to the expeditious review of each application and uses all reasonable means of keeping costs as low as feasible, its responsibility for ensuring the public health and safety and environmental protection cannot be compromised. The NRC is committed to the effective use of its increasingly limited resources and therefore cannot afford to use these resources unwisely if it is to successfully perform its mission. 10 CFR Part 170.51 of the Commission's regulations provides the mechanism whereby licensees are allowed to dispute a debt if they believe the debt is incorrect. Disputed debts must be submitted in accordance with the provisions of 10 CFR Part 15.31 "Disputed Debts."

9. Fee Deferral Policy for Standard Plant and Early Site Reviews

Comment. One commenter urged the NRC to reestablish the NRC's previous fee deferral policy for standard plant and early site reviews in order to encourage the development of standardized designs and in light of the NRC decision to issue designs to be certified through rulemaking rather than by granting a license for the certified design.

Response. The NRC addressed this issue in the FY 1995 final rule (60 FR 32222; June 20, 1995), indicating that the Commission decided in its FY 1991

final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). The Commission revisited this issue as part of its review of fee policy required by the Energy Policy Act of 1992 (EPA-92) and reconfirmed its FY 1991 decision. The NRC continues to believe that the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these types of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees, and does not believe the points made by the commenter are sufficient to change current policy.

10. Credit for Services Rendered to NRC by Licensees

Comment. One commenter stated that the company performs services for the NRC which include training of NRC personnel, familiarization visits for NRC staff and contractors, and NRC requested tours for foreign and domestic dignitaries. The commenter believes that recovery of the costs by the licensee from the NRC would be justified and suggested that cost recovery for the licensee be implemented via "credits" against NRC annual fees.

Response. The annual fees assessed by the NRC are those necessary to recover 100 percent of its budget authority. In order to give "credits" to licensees, the NRC would have to adjust the entire annual fee structure for a few licensees who volunteer to assist the NRC from time to time. Other licensees would be required to pick up the lost sums attributable to the credits. The NRC notes that it is solely within the discretion of the licensee to determine whether or not such assistance should be provided to the NRC. Therefore, the NRC is not adopting this suggestion.

11. Billing of the Office of Nuclear Regulatory Research Activities Related to Design Certification Reviews

Comment. One commenter stated that NRC should bill design certification applicants for the Office of Nuclear Reactor Regulation (NRR) activities only and not bill for any activities relating to the Office of Nuclear Regulatory Research (RES).

Response. This issue was addressed in the final FY 1995 fee rule. After careful consideration of the comments received on the proposed rule, the NRC indicated that beginning with the

effective date of the FY 1995 final fee rule the NRC would bill applicants for RES's direct review and evaluation of the standard design in support of the NRC's Final Design Approval (FDA) design certification (60 FR 14673; March 20, 1995). In the final FY 1995 fee rule, the NRC stated that it was changing its fee policy in this area and that it will charge vendors for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, will be included in the annual fee assessed under 10 CFR Part 171 annual fees (60 FR 32224; June 20, 1995). The NRC does not believe the arguments advanced by the commenter are sufficient to warrant a change in agency policy.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1996 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1996, the NRC's budget authority is \$473.3 million, of which \$11.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$462.3 million in FY 1996 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. This amount to be recovered for FY 1996 is about \$41.3 million less than the total amount to be recovered for FY 1995 and \$50.7 million less when compared to the amount to be recovered for FY 1994. The NRC estimates that approximately \$120.5 million will be recovered in FY 1996 from fees assessed under 10 CFR Part 170 and other offsetting receipts. The remaining \$341.8 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1996.

As a result of the reduced amount to be recovered for FY 1996 and the final changes outlined in this section, the FY 1996 annual fees for all licensees have been reduced by 6.5 percent compared to the annual fees assessed for FY 1995. The following examples illustrate changes in annual fees.

	FY 1995 annual fee	FY 1996 annual fee
Class of Licensees:		
Power Reactors	\$2,936,000	\$2,746,000
Nonpower Reactors	56,500	52,800

	FY 1995 annual fee	FY 1996 annual fee
High Enriched Uranium Fuel Facility	2,569,000	2,403,000
Low Enriched Uranium Fuel Facility	1,261,000	1,179,000
U _F Conver- sion Facility	639,200	597,800
Uranium Mills	60,900	57,000
Typical Materials Licensees:		
Radiographers	13,900	13,000
Well Loggers	8,100	7,500
Gauge Users	1,700	1,600
Broad Scope Medical	23,200	21,700

The NRC is also continuing its streamlining of the fee structure and process for materials licenses which began in FY 1995 and will make other changes as discussed in Sections A and B. Among the changes will be a change in the billing date for the annual fees imposed on many materials licensees.

The NRC's fees for FY 1996 will become effective 60 days after publication of the final rule in the *Federal Register*. The NRC will send a bill for the amount of the annual fee upon publication of the FY 1996 final rule to the licensee or certificate, registration or approval holder not subject to quarterly billing (those licensees who pay annual fees of less than \$100,000) and whose anniversary date (the first day of the month in which the original license was issued) is before the effective date of the final FY 1996 rule. For these licensees, payment will be due on the effective date of the FY 1996 rule. Those materials licensees whose license anniversary date during FY 1996 falls after the effective date of the final FY 1996 rule will be billed during the anniversary month of the license and payment will be due on the date of the invoice.

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

Four amendments have been made to 10 CFR Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the two professional hourly rates established in FY 1995 in § 170.20 are revised based on the FY 1996 budget. These rates are based on the FY 1996 direct FTEs and that portion of the FY 1996 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF. These rates are used to determine the Part 170 fees. The NRC has established a rate of \$128 per hour (\$223,314 per direct FTE) for the reactor program. This rate is applicable to all activities whose fees are based on full cost under § 170.21 of the fee regulations. A second rate of \$120 per hour (\$209,057 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to all materials activities whose fees are based on full cost under § 170.31 of the fee regulations.

The two rates are based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Second, the NRC has adjusted the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees to reflect the changes in the revised hourly rates.

Third, to continue FY 1995 initiatives for streamlining its fee program and improving the predictability of fees, the NRC has eliminated certain materials "flat" renewal fees in § 170.31 and has amended § 170.12 accordingly. This final action is also consistent with NRC's recent Business Process Reengineering initiative to extend the duration of certain materials licenses. The NRC published a proposed rule in the *Federal Register* for comment on September 8, 1995 (60 FR 46784) explaining this initiative. In the September 8, 1995, proposed rule, certain materials licenses would be extended for five years beyond their expiration date. Additionally, comments were requested on the general topic of the appropriate duration of licenses. A final rule was published in the *Federal Register* on January 16, 1996 (61 FR 1109).

The elimination of 10 CFR Part 170 materials "flat" renewal fees continues to recognize that the NRC's "regulatory service" provided to licensees, as referred to in OBRA-90, is comprised of the total regulatory activities that the NRC determines are needed to regulate

a class of licensees. These regulatory activities include not only renewals but also inspections, research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This final action does not result in any net fee increases for affected licensees and would provide those licensees with greater fee predictability, a frequent licensee request in comments on past fee rules. The materials annual fees, which include the cost for any renewals, are effective for FY 1996. Materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will receive a refund for those payments, as appropriate.

Fourth, the language in § 170.31, Category 15, relating to export and import licenses, is amended to clarify that export and import of materials includes the export and import of radioactive waste. The NRC amended 10 CFR Part 110 effective August 21, 1995 (60 FR 37556; July 21, 1995), to require specific licenses for the export or import of radioactive waste.

In summary, the NRC has (1) revised the two 10 CFR Part 170 hourly rates; (2) revised the licensing fees assessed under 10 CFR Part 170 to reflect the cost to the agency of providing the service; (3) eliminated the materials "flat" renewal fees in § 170.31 and amended § 170.12 accordingly; and (4) amended Category 15 in § 170.31 to make clear that fees will be assessed for licenses authorizing the export or import of radioactive waste.

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

Three amendments have been made to 10 CFR Part 171. First, the NRC is amending §§ 171.15 and 171.18 to revise the annual fees for FY 1996 to recover approximately 100 percent of the FY 1996 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be

recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other receipts as well as on the number of licensees paying the fees. The NRC does not believe the changes to the FY 1996 budget compared to the FY 1995 budget warrant establishing new baseline fees for FY 1996. Therefore, the NRC is establishing the FY 1996 annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. The 6.5 percent reduction is based on the changes in the budget to be recovered from fees, the amount of the budget recovered for 10 CFR Part 170 fees and other offsetting receipts, and changes in the number of licensees paying annual fees. Table I shows the total budget and fee amounts for FY 1995 and FY 1996.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1995 ANNUAL FEES

(Dollars in millions)

	FY95	FY96
Total Budget	\$525.6	\$473.3
Less NWF	- 22.0	- 11.0
Total Fee Base	503.6	462.3
Less Part 170 Fees and Other Receipts	141.1	120.5
Total Annual Fee Amount ..	362.5	341.8

As shown in Table I, the total amount to be recovered from annual fees in FY 1996 is \$20.7M (\$341.8-\$362.5) or 5.7 percent less than the amount that was to be recovered from annual fees in FY 1995. This difference is the net change resulting from a reduction in the budget and a reduction in the expected collection from 10 CFR Part 170 fees and other receipts. The NRC notes that the reduction in 10 CFR Part 170 fees for FY 1996 results primarily from the fact that NRC had a one-time collection of five quarters of 10 CFR Part 170 fees in FY 1995 as a result of changes in its billing practices which permits the NRC to bill for services shortly after they are rendered.

In addition to changes in the budget and 10 CFR Part 170 fees and other receipts, the number of licensees to pay fees in FY 1996 changed compared to FY 1995. Also, the amount of the small entity surcharge (difference between annual fee and small entity fee) decreased as the annual fees decreased. The changes in the number of licensees in the various classes plus the reduction in the small entity surcharge result in an additional decrease in the annual fee

per licensee of 0.8 percent. Thus the total change in the annual fees for FY 1996 compared to FY 1995 is a decrease of 6.5 percent (5.7 percent plus 0.8 percent).

Second, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of annual fees for FY 1996 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. All other licensees and approval holders who held a license or approval on October 1, 1995, are subject to FY 1996 annual fees. This change is made in recognition of the fact that since the final FY 1995 rule was published in June 1995, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1995 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all such requests before the end of the fiscal year on September 30, 1995. Similar situations existed after the FY 1991-1994 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Third, beginning in FY 1996, the NRC will assess § 171.16(d) annual fees based on the anniversary of the date the license was originally issued for those materials licenses whose annual fees are less than \$100,000. Accordingly, a new paragraph is added to § 171.19. For example, if the original license was issued on June 17, then the anniversary date of that materials license, for annual fee purposes is June 1. The licensee will be billed in June of each year for the annual fees in effect on the anniversary date (the first day of the month that the original license was issued) of the license. For FY 1996, those affected materials licenses with a license anniversary date between October 1, 1995, and the effective date of the final FY 1996 fee rule will be billed upon publication of the final rule in the *Federal Register* and annually thereafter during the anniversary month of the license. Those affected materials licenses whose license anniversary date is on or after the effective date of the final FY 1996 fee rule will be billed during the anniversary month of the

license and annually thereafter based on the annual fee in effect at the time of billing. The specific license categories of materials licensees affected by this final change are listed in § 171.19(d) of this final rule.

Billing certain materials licensees on the anniversary date of the license will allow the NRC to make the billing process more efficient by distributing the billing and collection of annual fee invoices over the entire year. The current practice is to bill over 6,000 materials licenses simultaneously during the fiscal year. Section 171.19 is amended to credit quarterly partial annual fee payments for FY 1996 already made by certain licensees in FY 1996 either toward their total annual fee to be assessed, or to make refunds, if necessary. Materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will receive a refund for those payments, as appropriate.

The final amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996-1999, the expectation is that annual fees will be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

IV. Section-by-Section Analysis

The following analysis of those sections that will be amended by this final rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.12 Payment of Fees

This section is amended to conform to the streamlining changes being made by the NRC. Section 170.12(a), which describes application fees, is amended to recognize that the NRC will not issue a new license or amendment prior to receipt of the prescribed fee. Section 170.12(d), which describes renewal fees, is amended to recognize that materials "flat" renewal fees are eliminated. Section 170.12(g), which discusses inspection fees, is amended to recognize that materials "flat" inspection fees were eliminated in the FY 1995 final rule (60 FR 32218; June 20, 1995).

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to establish two professional staff-hour rates based on FY 1996 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1996 for all activities whose fees are based on full cost under § 170.21 is \$128 per hour, or \$223,314 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under § 170.31 is \$120 per hour, or \$209,057 per direct FTE. The rates are

based on the FY 1996 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

- 1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.
- 2. Direct contract support, which is the use of contract or other services in

support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

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

TABLE II.—FY 1996 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES
(Dollars in millions)

	Reactor program	Materials program
Salary and Benefits:		
Program	\$149.6	\$46.3
Allocated Agency Management & Support	40.9	12.7
Subtotal	190.5	59.0
General and Administrative Support (G&A):		
Program Travel and Other Support	11.7	3.2
Allocated Agency Management and Support	69.5	21.5
Subtotal	81.2	24.7
Less offsetting receipts	.1	
Total Budget Included in Hourly Rate	271.6	83.7
Program Direct FTEs	1,216.2	400.5
Rate per Direct FTE	223,314	209,057
Professional Hourly Rate	128	120

Dividing the \$271.6 million budget for the reactor program by the number of reactor program direct FTEs (1216.2) results in a rate for the reactor program of \$223,314 per FTE for FY 1996. Dividing the \$83.7 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (400.5) results in a rate of \$209,057 per FTE for FY 1996. The Direct FTE Hourly Rate for the reactor program is \$128 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$223,314) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$120 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$209,057) by the number of productive hours in one year (1744 hours). The method used to calculate the FY 1996

hourly rate is the same as the method used in the FY 1995 rule. The FY 1996 rate is slightly higher than the FY 1995 rate due in part to the Federal pay raise given to all Federal employees in January 1995.

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

The NRC is revising the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1996 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after

the effective date of the final rule will be assessed at the FY 1996 hourly rate for the reactor program, as shown in § 170.20. Although the average amounts of time needed to review import and export licensing applications have not changed, the fees in § 170.21, facility Category K, have increased from FY 1995 as a result of the increase in the hourly rate.

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

hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

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

The licensing and inspection fees in this section, which are based on full-cost recovery, are modified to recover the FY 1996 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application ("flat" fees) are adjusted to reflect the increase in the professional hourly rate from \$116 per hour in FY 1995 to \$120 per hour in FY 1996. The "flat" renewal fees for certain materials licenses in § 170.31 are eliminated and combined with the materials annual fees in § 171.16(d).

The amounts of the licensing "flat" fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to the nearest \$10.

Fee Category 15, covering the fees for export and import licenses, is amended to include clarifying language that export and import of materials includes the export and import of radioactive waste. The NRC amended 10 CFR Part 110 on July 21, 1995 (60 FR 37556), to require specific licenses for the export and import of radioactive waste. The final rule became effective August 21, 1995.

The licensing "flat" fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D; 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule are subject to the revised fees in this final rule. Although the average amounts of time needed to review licensing applications have not changed, the "flat" fees in § 170.31 have increased from FY 1995 as a result of the increase in the hourly rate.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$120,

as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised as described below. Paragraph (d) is removed and reserved and paragraphs (a), (b), (c)(1), (c)(2) and (e) are revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1996.

Paragraph (b) is revised in its entirety to establish the FY 1996 annual fee for operating power reactors and to change fiscal year references from FY 1995 to FY 1996. The fees are established by reducing FY 1995 annual fees (prior to rounding) by 6.5 percent. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) and continue to be shown for convenience purposes. Paragraphs (c)(1) is revised in its entirety and (c)(2) is removed and reserved.

With respect to Big Rock Point, a smaller, older reactor, the NRC hereby grants a partial exemption from the FY 1996 annual fees similar to FY 1995 based on a request filed with the NRC in accordance with § 171.11.

Each operating power reactor, except Big Rock Point, will pay an annual fee of \$2,746,000 in FY 1996.

Paragraph (d) is removed and reserved.

Paragraph (e) is revised to show the amount of the FY 1996 annual fee for nonpower (test and research) reactors. In FY 1996, the annual fee of \$52,800 is 6.5 percent below the FY 1995 level. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC amended

§ 171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11.

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

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$350,000 to \$5 million pay a maximum fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on the budget but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in this final rule for convenience.

Section 171.16(d) is revised to establish the FY 1996 annual fees for materials licensees, including Government agencies, licensed by the NRC. These fees were determined by reducing the FY 1995 annual fees (prior to rounding) by 6.5 percent.

For the first time, the NRC is combining the "flat" material renewal fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171. As described in the *Federal Register* on September 8, 1995 (60 FR 46784), recent NRC internal reviews and regulatory impact surveys of materials licensees have highlighted areas in which the current materials licensing process can be improved. The NRC has completed the preliminary phases of its Business Process Reengineering (BPR) initiative to redesign the process of licensing medical, academic, and industrial users of byproduct materials as well as with regard to some small scope users of source and special nuclear materials. The NRC has extended, by rulemaking, certain specific materials licenses by five years from the current expiration dates of those licenses. Resources that would have otherwise been used to

renew these licenses would be devoted to the BPR project. The NRC is also examining whether to permanently change the license duration for materials licenses. The NRC estimates that approximately 80 percent of its approximately 6,500 materials licenses will be extended by the final rulemaking published in the *Federal Register* January 20, 1996 (60 FR 1109). Consistent with this change in license renewals, the NRC is, for fee purposes, combining the materials "flat" renewal fees in 10 CFR Part 170 with the annual fees in 10 CFR Part 171.

This action also recognizes that the NRC's "regulatory service" provided to licensees, as referred to in OBRA-90, is comprised of the total regulatory activities that the NRC determines are needed to regulate a class of licensees. These regulatory activities include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept of OBRA-90, the NRC believes that materials licensees' "flat" renewal fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the renewal fee, has, in effect, already been implemented for most materials licensees. First, materials licensees currently pay a "flat fee" per renewal based on the average cost of a renewal for their fee category, and second, the renewal term of five years is identical for most materials licensees. Thus, licensees in the same materials license fee category already pay essentially the same average annual cost for renewals. Further, the average cost will decrease to a relatively small amount as a result of the five-year extension and potential change in license duration. Therefore, combining renewal and annual fees results in essentially the same average cost per license over time. This approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic renewals. Because certain materials FY 1996 annual fees will include renewals, those materials licensees who paid a "flat" 10 CFR Part 170 renewal fee for renewal applications filed in FY 1996 will be issued a refund, as appropriate.

Beginning in FY 1996, the NRC will also bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be

assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This final rule will apply to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. Billing most materials licenses on the anniversary date of the license will allow the NRC to improve the efficiency of its billing process; under this final rule an average of approximately 500 annual fee invoices will be sent to materials licensees each month. The current practice of billing over 6,000 materials licensees simultaneously each fiscal year is eliminated. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will be billed in June of each year for the annual fee in effect on June 1. This final change to the billing system means that during the transition period of FY 1996 affected materials licensees with an anniversary date falling between October 1, 1995, and the effective date of the FY 1996 fee rule will receive a bill payable on the effective date of the FY 1996 final rule. Affected materials licensees with license anniversary dates falling on or after the effective date of the FY 1996 final rule will be billed during their anniversary month of their license. Under this final rule, some materials licensees will unavoidably receive two annual fee bills during the 12 month transition period. For example, a materials licensee who paid its FY 1996 annual fee bill in May 1996, the planned effective date of the FY 1996 fee rule, will receive a bill six months later in November 1996 (FY 1997) if November is the anniversary month of that materials license. In this example, the licensee will pay the same annual fee in FY 1997 (November) as he paid in FY 1996 (May). Materials licensees will continue to pay fees at the FY 1996 rate in FY 1997 until such time as the FY 1997 final fee rule becomes effective. Each bill would be for a different fiscal year, therefore, no double billing would occur.

The NRC believes that the efficiencies gained by billing certain materials annual fees throughout the year as well as having materials licensees know exactly when they will be billed each year for the annual fee outweigh the inconveniences that may be caused during the transition period. New

licenses issued during FY 1996 will receive a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for FY 1996. New materials licenses issued on or after April 1, 1996, will not be assessed an annual fee for FY 1996. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning with the effective date of this FY 1996 final rule, affected licensees will be billed and will pay the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

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

The amount or range of the FY 1996 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	\$2,403,000.
Part 70—Low enriched fuel facility.	1,179,000.
Part 40—UF ₆ conversion facility.	597,800.
Part 40—Uranium recovery facilities.	20,600 to 57,000.
Part 30—Byproduct Material Licenses.	450 to 21,700. ¹
Part 71—Transportation of Radioactive Material.	950 to 72,700.
Part 72—Independent Storage of Spent Nuclear Fuel.	260,900.

¹ Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$388,400.

Section 171.16(e) is revised in its entirety to indicate the activities that were a part of the additional charge (surcharge) included in the FY 1995 annual fees. These activities are listed and continue to be shown for convenience.

Footnote 1 of 10 CFR 171.16(d) is amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/

storage only licenses before October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. All other licensees and approval holders who held a license or approval on October 1, 1995, are subject to the FY 1996 annual fees.

Section 171.19 Payment

Paragraph (b) is revised to give credit for partial payments made by certain licensees in FY 1996 toward their FY 1996 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1996 will have been made by operating power reactor licensees and some large materials licensees before this final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid renewal fees for renewal applications that were filed in FY 1996, whereas this final rule includes the renewals in the annual fee. The NRC will refund these renewal fee payments, as appropriate. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) is revised to update fiscal year references and to delete the references concerning payment requirements for those licensees whose annual fees are less than \$100,000.

A new paragraph (d) is added to cover those licensees whose annual fees are less than \$100,000 and who will be billed on the anniversary date of their license beginning in FY 1996.

During the past five years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that

the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 33700).

The NRC reinstated the exemption from 10 CFR Part 171 annual fees for nonprofit educational institutions on April 18, 1994 (59 FR 12539; March 17, 1994). In that final rule, the NRC indicated that although nonprofit research institutions were not exempt from annual fees, such institutions were free to file an exemption request based on the "public good" concept if they felt they could qualify. Several nonprofit research institutions have since filed and been granted an exemption from the annual fees on that basis. In addition, some Federal agencies who hold materials licenses have filed for exemption from annual fees based on the public good concept as well. The requests from Federal agencies to receive public good exemptions have been denied by the NRC. The NRC did not intend to extend public good exemptions to Federal agencies.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power*

Company, 433 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

- (1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;
- (2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;
- (3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;
- (4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;
- (5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and
- (6) The NRC's fees were not arbitrary or capricious.

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

amount of the FY 1996 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1996 budget of \$473.3 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

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

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

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

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

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

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1996. The final rule results in a decrease in the annual fees charged to all licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not

apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

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

10 CFR Part 171

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

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

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 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 § 170.12, paragraph (d)(1) is removed and reserved and paragraphs (a) and (g) are revised to read as follows:

§ 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. The NRC will not issue a new license or amendment prior to the receipt of the prescribed fee. All application fees will be charged

irrespective of the Commission's disposition of the application or a withdrawal of the application.

(d) * * *

(1) [Reserved].

(g) *Inspection fees.* Fees for all inspections subject to full cost recovery will be assessed on a per inspection basis for completed inspections and are payable, on a quarterly basis, upon notification by the Commission. Inspection costs include preparation time, time on site, and documentation time and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

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

Reactor Program (§ 170.21 Activities).	\$128 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	\$120 per hour.

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

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

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

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility categories and type of fees	Fees ^{1,2}
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application-new license	\$7,800
Amendment	\$7,800
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8):	
Application-new license	\$4,800
Amendment	\$4,800
3. Application for export of components requiring foreign government assurances only:	
Application-new license	\$3,000
Amendment	\$3,000
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:	
Application-new license	\$1,200
Amendment	\$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:	
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.

5. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of

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

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees ¹	Fee ^{2,3}
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.

SCHEDULE OF MATERIALS FEES—Continued

(See footnotes at end of table)

Category of materials licenses and type of fees ¹	Fee ^{2,3}
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: ⁴	
Application—New license	\$550.
Amendment	\$300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: ⁴	
Application—New license	\$600.
Amendment	\$290.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	\$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A. (1):	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A. (1):	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	\$160.
Amendment	\$240.
C. All other source material licenses:	
Application—New license	\$2,800.
Amendment	\$420.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	\$3,000.
Amendment	\$550.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	\$1,200.
Amendment	\$580.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	\$4,100.
Amendment	\$520.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	\$1,500.
Amendment	\$430.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	\$1,200.
Amendment	\$380.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	\$1,500.
Amendment	\$370.
G. Licensee for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	\$6,000.
Amendment	\$780.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	\$2,400.
Amendment	\$1,000.
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	\$4,400.
Amendment	\$860.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	\$1,600.
Amendment	\$290.
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	\$1,300.
Amendment	\$310.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	\$4,300.
Amendment	\$660.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	\$1,500.
Amendment	\$610.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P;	
and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	\$1,900.
Amendment	\$590.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	\$3,900.
Amendment	\$720.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	\$550.
Amendment	\$300.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	\$3,400.
Amendment	\$410.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	\$1,700.
Amendment	\$290.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	\$3,200.
Amendment	\$640.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	\$5,100.
Application—New license	\$790.
Amendment	
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:	\$2,800.
Application—New license	\$470.
Amendment	
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:	\$3,000.
Application—New license	\$580.
Amendment	
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:	\$1,400.
Application—New license	\$440.
Amendment	
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	\$760.
Application—New license	\$350.
Amendment	
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:	\$3,400.
Application—each device	\$1,200.
Amendment—each device	
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:	\$1,700.
Application—each device	\$600.
Amendment—each device	
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	\$720.
Application—each source	\$240.
Amendment—each source	
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:	\$360.
Application—each source	\$120.
Amendment—each source	
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	Full Cost.
Approval, Renewal, Amendment	Full Cost.
Inspections	
B. Evaluation of 10 CFR Part 71 quality assurance programs:	\$340.
Application—Approval	\$250.
Amendment	
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	Full Cost.
Approval, Renewal, Amendment	Full Cost.
Inspections	
12. Special projects: ⁶	Full Cost.
Approvals and preapplication/licensing activities	Full Cost.
Inspections	
13. A. Spent fuel storage cask Certificate of Compliance:	Full Cost.
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	
B. Inspections related to spent fuel storage cask:	Full Cost.
Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	
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:	Full Cost.
Approval, Renewal, Amendment	Full Cost.
Inspections	
15. Import and Export licenses:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite:	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries:	\$7,800.
Application—new license	\$7,800.
Amendment	
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country:	\$4,800.
Application—new license	\$4,800.
Amendment	
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act:	\$3,000.
Application—new license	\$3,000.
Amendment	
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures:	\$1,200.
Application—new license	\$1,200.
Amendment	
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments:	\$120.
Amendment	
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20:	\$1,100.
Application (initial filing of Form 241)	\$200.
Revisions	

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

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

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by the prescribed application fee of \$125,000.

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

(c) Renewal/reapproval fees. Applications subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) Amendment/Revision Fees.

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

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

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

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

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

² Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fees 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 that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

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

- (a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
- (b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
- (c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

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

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

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

7. In § 171.15, paragraph (d) is removed and reserved and paragraphs (a), (b), (c)(1), (c)(2) and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

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

(b) The FY 1996 uniform annual fee for each operating power reactor which must be collected by September 30, 1996, is \$2,746,000. This fee has been determined by adjusting the FY 1995 annual fee downward by approximately 6 percent. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing

and inspection activities recovered under 10 CFR Part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center.

(c) The activities comprising the FY 1995 surcharge are as follows:

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities; and

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(d) [Reserved].

(e) The FY 1996 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor \$52,800
Test reactor \$52,800

* * * * *

8. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

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

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1996 as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts):	
\$350,000 to \$6 million	\$1,800
Less than \$350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees ...	400
Small Governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees ...	400

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

* * * * *

(4) For FY 1996, the maximum annual fee a small entity is required to pay is

\$1,800 for each category applicable to the license(s).

(d) The FY 1996 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are

shown below. The FY 1996 annual fees, which must be collected by September 30, 1996, have been determined by adjusting downward the FY 1995 annual fees by approximately 6 percent.

The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown in paragraph (e) of this section.

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

(See footnotes at end of table)

Category of materials licenses	Annual fees ^{1,2,3}
1. Special nuclear material:	
A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities:	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox (SNM-42)	\$2,403,000
Nuclear Fuel Services (SNM-124)	2,403,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hemattite) (SNM-33)	1,179,000
General Electric Company (SNM-1097)	1,179,000
Siemens Nuclear Power (SNM-1227)	1,179,000
Westinghouse Electric Company (SNM-1107)	1,179,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
B&W Fuel Company (SNM-1168)	469,200
(b) All Others:	
General Electric (SNM-960)	318,600
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	260,900
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	2,800
E. Licenses for the operation of a uranium enrichment facility	N/A
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	597,800
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities ⁴	57,000
Class II facilities ⁴	32,200
Other facilities ⁴	20,600
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	41,800
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	7,400
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	450
C. All other source material licenses	8,100
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	15,400
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,200
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	10,400
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	4,100
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	2,900
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	18,100

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

[See footnotes at end of table]

Category of materials licenses	Annual fees 1, 2, 3
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	4,600
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	8,200
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	3,500
K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	3,000
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,400
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution	5,100
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	5,600
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	13,000 1,600
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	\$ 94,300
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	13,300
C. Licenses specifically authorizing the receipt of repackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,100
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	7,500 12,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies	
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	13,600
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	9,500
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	21,700
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	4,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,600
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,400

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

[See footnotes at end of table]

Category of materials licenses	Annual fees (1, 2, 3)
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,400
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	720
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	⁶ N/A
Other Casks	⁶ N/A
B. Approvals issued of 10 CFR Part 71 quality assurance programs.	72,700
Users and Fabricators	950
Users	⁶ N/A
11. Standardized spent fuel facilities	⁶ N/A
12. Special Projects	⁶ N/A
13. A. Spent fuel storage cask Certificate of Compliance	260,900
B. General licenses for storage of spent fuel under 10 CFR 72.210	
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	⁷ N/A
15. Import and Export licenses	⁸ N/A
16. Reciprocity	⁸ N/A
17. Master materials licenses of broad scope issued to Government agencies	388,400
18. Department of Energy:	¹⁰ 1,077,000
A. Certificates of Compliance	1,812,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1995, and permanently ceased licensed activities entirely by September 30, 1995. Annual fees for licensees who filed for termination of a license, down-gradations 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 irradiation activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

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

³ For FYs 1997 and 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

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

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

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

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

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

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

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

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

(e) The activities comprising the FY 1995 surcharge are as follows:

- (1) LLW disposal generic activities;
- (2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and
- (3) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit

educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

9. In § 171.19, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 171.19 Payment.

(b) For FY 1996 through FY 1998, the Commission will adjust the fourth

quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will refund any "flat" materials renewal fees payments received for renewal applications filed in FY 1996, as appropriate. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule or on the anniversary date of the license.

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

(c) For FYs 1996 through 1998, annual fees in the amount of \$100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FYs 1996 through 1998, annual fees of less than \$100,000 must be paid as billed by the NRC. Beginning in FY 1996, materials license annual fees that are less than \$100,000 will be billed on the anniversary of the license. The materials licensees that will be billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. During the transition year of FY 1996, licensees with license anniversary dates falling between October 1, 1995, and the effective date of the FY 1996 final rule will receive an annual fee bill payable on the effective date of the final rule, and licensees with license anniversary dates that fall on or after the effective date of the final rule will be billed on the anniversary of their license. Starting with the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license.

Dated at Rockville, Maryland, this 25th day of March, 1996.

For the Nuclear Regulatory Commission,
James M. Taylor,
Executive Director for Operations.

Appendix A to This Final Rule Regulatory Flexibility Analysis For the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the

agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate \$1 million size standard for private practice physicians and applied a receipts-based size standard of \$5 million to this class of licensees. This mirrored the revised SBA standard of \$5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995 fee rule and is using them in this FY 1996 final rule. The small entity fee categories in § 171.16(c) of this final rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at \$1,800 and a lower-tier small entity fee of \$400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of \$250,000 was raised to \$350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted

the receipts-based standard from \$3.5 million to \$5 million. The NRC believes that continuing these actions for FY 1996 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA-90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was approximately \$445.3 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million; for FY 1994 about \$513 million; for FY 1995 about \$503.6 million and the amount to be collected in FY 1996 is approximately \$462.3 million.

To comply with OBRA-90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) in FY 1994 (59 FR 36895; July 20, 1994) and in FY 1995 (60 FR 32218; June 20, 1995) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FYs 1991-1995.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other receipts as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is establishing the FY 1996 annual fees for all licensees at 6.5 percent below the FY 1995 annual fees. The NRC believes that the 6.5 percent downward adjustment to the FY 1995 annual fees is not a substantial enough change to warrant establishing a new baseline for FY 1996.

The NRC is also continuing to streamline the fee structure and process for materials licenses, efforts which

began in FY 1995. Two changes are being made in this area.

First, the NRC will assess annual fees for certain materials licenses on the anniversary date of the license. Billing certain materials licenses on the anniversary date of the license will allow NRC to make improved efficiencies in the billing process whereby approximately 500 annual fee invoices will be sent to materials licensees each month. The current practice of billing over 6,000 materials licensees at the same time in the fiscal year is eliminated. The NRC believes that the efficiencies gained by billing certain materials annual fees on a monthly basis as well as materials licensees knowing exactly when they will be billed each year for the annual fee outweigh the inconveniences that may be caused during the FY 1996 transition period.

Second, the NRC is further streamlining the materials fee program and improving the predictability of fees by eliminating the materials "flat" renewal fees in \$ 170.31. This action is consistent with the NRC's recent Business Process Reengineering initiative to extend the duration of certain materials licenses. The NRC published a proposed rule explaining this initiative in the *Federal Register* on September 8, 1995, (60 FR 46784). In the proposed rule, certain materials licenses would be extended for five years beyond their expiration date. Additionally, comments were requested on the general topic of the appropriate duration of licenses. A final rule was published in the *Federal Register* on January 16, 1996 (61 FR 1109).

II. Impact on Small Entities

The comments received on the proposed FY 1991-1995 fee rule revisions and the small entity certifications received in response to the final FY 1991-1995 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

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

licensees could qualify as small entities under the current NRC size standards.

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

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

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

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

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

Over the past five years, approximately 2,900 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses

or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the \$3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993); in the FY 1994 rule (59 FR 36895; July 20, 1994) and in the FY 1995 rule (60 FR 32218; June 20, 1995). The alternatives considered by the NRC can be summarized as follows.

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

The NRC has reexamined the FY 1991-1995 evaluations of the these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1996, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1996, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 license fees

(application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1996, the NRC concludes that the 10 CFR Part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR Part 171 maximum annual small entity fee of \$1,800 be continued.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1996 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1996, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of \$1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992-1995, the NRC is continuing the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of \$400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the *Federal Register* on April 17, 1992 (57 FR 13625) and now includes manufacturing companies with a relatively small number of employees.

III. Summary

The NRC has determined the 10 CFR Part 171 annual fees significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-for-

profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991-1995 rules remain valid for this final rule for FY 1996.

[FR Doc. 96-9026 Filed 4-11-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-ANE-47; Amendment 39-9586; AD 95-24-05 R1]

Airworthiness Directives; McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 series propellers, that currently requires initial and repetitive visual and dye penetrant inspections of the propeller hub for cracks. This existing AD also requires a one-time eddy current inspection for cracks in the threaded areas of the propeller hub followed by modification of the hub to contain oil with red dye as a terminating action to the repetitive inspections. This amendment clarifies that a dye penetrant inspection is only necessary if crack indications are found or suspected during the visual inspection. This amendment is prompted by requests from operators for clarification of inspection procedures. The actions specified by this AD are intended to prevent propeller blade separation due to a cracked propeller hub, which could result in separation of the engine from the aircraft and subsequent loss of aircraft control.

DATES: Effective April 12, 1996.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of December 18, 1995. (60 FR 61645, December 1, 1995).

Comments for inclusion in the Rules Docket must be received on or before June 11, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-47, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from McCauley Accessory Division, The Cessna Aircraft Company, 3535 McCauley Dr., Vandalia, OH 45377-0430; telephone (513) 890-5246, fax (513) 890-6001. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Room 232, Des Plaines, IL 60018; telephone (847) 294-7134, fax (847) 294-7834.

SUPPLEMENTARY INFORMATION: On November 7, 1995, the Federal Aviation Administration (FAA) issued AD 95-24-05, Amendment 39-9437 (60 FR 61645, December 1, 1995), applicable to McCauley Accessory Division, The Cessna Aircraft Company, Model C35, C72, C74, C75, C80, C86, C87, C92, and C93 series propellers, to require initial and repetitive visual and dye penetrant inspections of the propeller hub for cracks. That AD also requires a one-time eddy current inspection for cracks in the threaded areas of the propeller hub followed by modification of the hub to contain oil with red dye, which constitutes terminating action to the repetitive visual and dye-penetrant inspections. That action was prompted by several reports of cracked propeller hubs. Additionally, two incidents have occurred where the propeller blades separated during flight. That condition, if not corrected, could result in propeller blade separation due to a cracked propeller hub, which could result in separation of the engine from the aircraft and subsequent loss of aircraft control.

Since the issuance of that AD, the FAA has received requests from