

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

May 19, 1997

MEMORANDUM TO: David L. Meyer, Chief
Rules Review and Directives Branch
Division of Freedom of Information
and Publication Services, ADM

FROM: *C. James Holloway, Jr.*
C. James Holloway, Jr.
Assistant for Fee Policy and Rules, OC

SUBJECT: FINAL NOTICE OF RULEMAKING -- 100 PERCENT
RECOVERY FOR FY 1997

Attached for your action are the following items relating to the publication of the subject final rule which was signed by the Chief Financial Officer on May 12, 1997.

1. Original and 25 copies of the Final Notice of Rulemaking - 10 CFR Parts 170 and 171.
2. Six Congressional letters relating to the final rule.
3. Draft public announcement.

The final rule is consistent with previous Commission fee policy decisions and does not constitute a significant question of policy nor does it amend regulations contained in 10 CFR Part 7, 8, or 9 Subpart C concerning matters of policy. Note that the final rule has been discussed with the Office of Enforcement. They agree that no changes to the Criminal Penalties or Enforcement Policy provisions need to be made at this time.

Given the time urgency, the final rule should be published immediately. We are also attaching for your files a copy of the "Approved for Publication" and "Daily Staff Notes to the Commission."

Thank you for your assistance in this matter.

Attachments: As stated

cc: Alvin Blunt, CIO

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF 55

Revision of Fee Schedules; 100% Fee Recovery, FY 1997

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) 1997 less amounts appropriated from the Nuclear Waste Fund (NWF). The FY 1997 NRC Appropriation also excluded from the fee base the cost of NRC review relating to the commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site. The

amount to be recovered for FY 1997 is approximately \$462.3 million.

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

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

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Chief Financial Officer, 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.
- X. Small Business Regulatory Enforcement Fairness Act.

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 April 12, 1996 (61 FR 16203), 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 1996, less the appropriation received from the Nuclear Waste Fund. Several changes to the fees assessed for FY 1996 were adopted by the NRC. These changes were highlighted in the final rule (61 FR 16203; April 12, 1996) and bear on the approach for establishing annual fees set forth in this final rule for FY 1997.

On February 27, 1997 (62 FR 8885), 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 1997, less the appropriation received from the Nuclear Waste Fund and the General Fund. These changes were highlighted in the proposed rule (62 FR 8885; February 27, 1997) and have been adopted in this final rule for FY 1997. The major changes are summarized as follows:

1. Adjust all 10 CFR 171 annual fees upward by about 8 percent. This change is consistent with the NRC's intention stated in the FY 1995 final rule. The NRC indicated that, beginning in FY 1996, annual fees would be stabilized by adjusting prior year 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. Establish and assess a new annual fee of \$2,606,000

(fee Category 1.E.) for each Certificate of Compliance issued to the United States Enrichment Corporation.

3. Revise the two professional hourly rates in §170.20 which are used to determine the 10 CFR Part 170 fees assessed by the NRC. The rate for FY 1997 for the reactor program is \$131 per hour and the rate for the materials program is \$125 per hour.
4. Adjust the current licensing and inspection fees in §§170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the review required by the Chief Financial Officers Act.
5. Implement a procedural change whereby fees will be assessed under §§170.21 and 170.31 to verify quality assurance, safeguards contingency, and emergency plan changes submitted by licensees.

II. Responses to Comments

The NRC received nine comments on the proposed rule. Although the comment period ended on March 31, 1997, the NRC has reviewed and evaluated all comments received, including those submitted after that date.

Several 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 1997 fee rule.

1. Streamline and stabilize annual fees.

Comment. Commenters continue to support the positive steps taken by the NRC to equitably distribute and to reduce the burden of user fees on licensees. Two commenters, who represent nuclear power plants, argue that the annual fees being charged to power plant licensees, and particularly the 8 percent increase in those fees proposed for 1997, are inconsistent with statutory requirements. In particular, the commenters argue that 42 U.S.C. 2214(b) requires, without exception, that every recipient of a definite service from the NRC should pay 10 CFR Part 170 fees. The statute says that "any person who receives a service or thing of value from the Commission shall [emphasis added] pay fees to cover the Commission's costs in providing any such service or thing of value." 42 U.S.C. 2214(b). The commenters believe that the word "shall" means that the agency has no authority not to charge 10 CFR Part 170 fees to parties who receive benefits from

the agency. They argue that the result of the NRC's not charging all beneficiaries, is a fee system that charges nuclear power plants for services provided to others. Therefore, the NRC fee system fails to meet the statutory requirement that, "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to licensees. 42 U.S.C. 2214(c)(3). As evidence that this statutory requirement has been violated, the commenters argue that the 8 percent increase in annual fees in FY 1997 is due largely to a projected and unexplained reduction in 10 CFR Part 170 fees charged to persons and entities other than power reactor licensees and is thus unrelated to the costs of regulating nuclear power reactors. The commenters believe that the agency should replace the proposed rule with one that charges everyone who receives a service from the agency the cost of providing that service.

Response. The NRC readily acknowledges the commenters' concerns for fairness and equity. To meet its statutory obligation to recover approximately 100 percent of its budget through fees, the NRC does collect from each power reactor licensee an annual fee a portion of which recovers costs not attributable to the regulation of nuclear power plants. There are also other licensees whose annual fees in part cover costs not attributable to the regulation of those licensees.

However, for reasons the NRC has set forth on many occasions, the NRC believes that the current fee system is as fair and equitable as the current statutory structure underlying the agency's fee system will permit. For example, the NRC is barred by law from charging all but two Federal agencies 10 CFR Part 170 fees; not all the work which the NRC does for other agencies and governments can be recovered through reimbursable agreements (see 60 FR 32218, 32222 (June 20, 1995)), and yet that work is necessary for public health and safety and U.S. national interests and under the Regulatory Flexibility Act, the agency is obliged to consider carefully the impact of its fee rules on small entities and to seek less onerous alternatives.

Such exemptions from fees as the NRC has granted are of long-standing, have been granted only after full and public consideration of the relevant policy questions (see, for example, 59 FR 12539 (March 19, 1994)), and are well-founded in law. When subsection 2214(b) in 42 U.S.C. says that "any person who receives a service or thing of value from the Commission shall pay fees", the words "shall" and "any person" are not absolute. They certainly do not eliminate any possibility of exemptions or override other statutory restrictions on the NRC's ability to assess user fees.

For example, the phrase "any person" is not all-inclusive. Subsection 2214(b) says persons shall pay "pursuant to section

9701 of title 31, United States Code", but section 9701 in turn rules out imposing such fees on any "person on official business of the United States Government", absent other legislation authorizing such assessments. Moreover, neither subsection 2214(b) nor the legislative history behind it reveal any intention to do away with the 10 CFR Part 170 exemptions that existed at the time subsection 2214(b) was enacted, and of which Congress was fully aware. Indeed, section 2214's basic requirement that the agency recover approximately 100 percent of its budget, less certain amounts, has been extended more than once since its enactment in 1990, and throughout the period since that enactment, most notably in the report to Congress required by section 2903 of the Energy Policy Act of 1992, the NRC has kept the Congress fully informed about the Part 170 exemptions and their impact on power reactor licensees, and Congress has chosen not to take any action against those exemptions. "When the statute giving rise to the longstanding interpretation has been reenacted without change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." *FDIC v. Philadelphia Gear*, 476 U.S. 426, 437 (1986).

Moreover, to the extent that the commenters' arguments are directed at the burdens they bear because some licensees are exempted from annual fees, the answer is much the same. Such exemptions have been carefully considered, after notice and

comment rulemaking; and it is unmistakable that exemptions from Part 171 are permitted by law: See *Florida Power & Light v. NRC*, 846 F.2d 765, 770 (D.C. Cir 1988), cert. denied 109 S. Ct. 1952 (1989) (NRC did not abuse its discretion by failing to impose annual fees on all licensees).

The 8 percent increase in annual fees for power reactors, about which the commenters are understandably concerned, was fully explained in the statement of considerations accompanying the proposed rule. See Part II, Section B and Table 1 in 62 Fed. Reg. 8885,8887 (February 27, 1997). As the discussion there shows, the increase is neither arbitrary or capricious. To recap briefly, the increase is the result of several factors: a substantial reduction in projected 10 CFR Part 170 fees, largely because reductions in resources devoted to reviews of applications for standard plant and reactor operating licenses; a reduction in the number of licensees paying annual fees, largely the result of one reactor's having ceased operations permanently and the reassignment this last March to Massachusetts of regulatory responsibility for some 425 materials licenses; several million dollars less in collections received in the current fiscal year as a result of billings from an earlier fiscal year; a small increase in the amount by which small entity fees are reduced; and a greater allowance for unpaid bills, to help assure that the agency will meet its obligation to collect 100 percent of its budget.

The commenters mention the increase in power reactor annual fees resulting from Massachusetts becoming an Agreement State as evidence that the increase in those fees is in fact attributable to costs of programs unrelated to the regulation of nuclear power reactors. See, e.g., 60 FR 32218, 32225 (June 20, 1995). The NRC has already addressed the comment that part of the increase cannot be attributed to the costs of regulating power reactors. The NRC adds here simply that only a small part of that increase can be attributed to the loss of half the annual fees from former NRC licensees in Massachusetts.

While the agency believes that its current structure is fully justified by law and policy, the agency remains committed to working with Congress to reduce the fee burdens that power reactor licensees, and other licensees, bear because they pay for regulatory activities that do not directly benefit them. Three years ago, the agency submitted a report to Congress that recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to about 90 percent, thus eliminating the surcharge the power plant licensees, and some others, bear because some parties receive benefits for which they do not pay. In the near future, the NRC will be updating that report and reassessing the need for legislation.

This final rule addresses the need to streamline and

stabilize FY 1997 annual fees by adjusting these fees by the percentage change (plus or minus) in NRC's total budget authority. The FY 1996 annual fees have been used as base annual fees and these annual fees have been adjusted upward for FY 1997 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 1997, all annual fees have been adjusted 8.4 percent above the FY 1996 levels.

2. Revise the two professional rates in 10 CFR 170.20 based on the FY 1997 budget and adjust the 10 CFR 170.21 and 170.31 licensing (application and amendment) "flat" fees to reflect the costs of providing the licensing services.

a. 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. However, one commenter was concerned that the increase in hourly rates from last year exceeds the general increase that was provided to all government workers. The commenter encouraged the NRC to control its costs by seeking efficiencies in these areas to attain a downward trend of licensing and inspection fees. Another commenter indicated that the hourly rate will increase almost five percent (\$120 per hour to \$125 per hour) and believes the

hourly rate is unjustifiably high and does not reflect the cost of providing regulatory services to licensees. The commenter stated that the \$125 hourly rate equals or exceeds the hourly charges of senior consultants or principals at major consulting firms and that it exceeds the generally accepted rate for similar work in private industry. The commenter requests that with hourly rates as high as \$125, the NRC continue its efforts to provide bills that contain more meaningful descriptions of the work done.

Response. The NRC has established in this final rule two professional hourly rates for FY 1997 which will be used to determine the 10 CFR Part 170 fees. A rate of \$131 per hour is established in §170.20 for the reactor program and a second rate of \$125 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), and the General Fund. The rates reflect the NRC budgeted cost per direct professional hour. This cost includes the salary and benefits for the direct hours, 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 \$131 and \$125 are discussed in detail in Part III, Section-by-Section Analysis, relating to \$170.20 of the proposed rule (62 FR 8888; February 27, 1997) 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 1997 are documented in the NRC's publication "Budget Estimates, Fiscal Year 1997" (NUREG-1100, Volume 12), which is available to the public. Copies of NUREG-1100, Volume 12, 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. The NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the licensee or

applicant.

b. Comment. One commenter indicated that although they appreciate NRC's efforts to stabilize fees based on percentage changes in NRC's annual budget, 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 commenter asserts that the Commission cannot impose fees under the IOAA unless there is a rational relationship between the fees and the regulatory services provided. The commenter, citing Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985), notes 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 commenter then suggests that the NRC fee system may violate this principle because the proposed hourly rate of \$125 for services provided by agency professionals is unduly high. The commenter goes on to say that the problem of the lack of reasonable relationship between annual fees and services rendered is exacerbated as more states become Agreement States, e.g., Massachusetts which became an Agreement State in FY 1997, leaving fewer NRC licensees to bear an even greater share of the burden. The commenter states that the current system, in effect, gives preferential treatment to licensees in Agreement States. The commenter 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.

Response. The Commission believes that its IOAA fee schedule is fully supported by applicable legal precedent and does not accept commenter's 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 (5th cir. 1979), cert. denied, 444 U.S. 1102 (1980). 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 that 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.2.a. which relates to the hourly rates being assessed by NRC under 10 CFR Part 170. The commenter has provided virtually no evidence

that could cause the NRC to conclude that its fees unreasonably exceed the value of the services rendered.

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 increases in annual fees 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.

3. Annual fees for Certificates of Compliance issued to the United States Enrichment Corporation.

a. Comment. The United States Enrichment Corporation (USEC) commented that the proposed annual fees of \$2,600,000 which have been proposed for the first time for each of the two enrichment facilities are not fair and equitable when compared to those imposed on similar facilities regulated by the NRC. USEC stated that the rationale for this as expressed in the NRC's proposed rule is an unsupported assertion that the relative weighted safety and safeguards factors for USEC's facilities are similar to a high enriched uranium facility. USEC believes this rationale is incorrect, unsupported by the facts, and contradictory to the NRC's own licensing actions. USEC indicates that the NRC has, in fact, certified USEC's gaseous diffusion

plants (GDPs) as low enriched uranium facilities and, as part of that licensing action, the NRC has approved safeguards measures appropriate for low enriched uranium facilities and has not imposed the safeguards measures required at high enriched facilities possessing strategic special nuclear material. USEC indicates that, in accordance with the joint statement of understanding between the NRC and the Department of Energy (DOE), DOE is solely responsible for any strategic special nuclear material which may be located at the Portsmouth, Ohio, GDP and that the presence of any such high enriched uranium at the Portsmouth GDP is not relevant to the NRC's fee-setting process. USEC states that the NRC methodology for determining annual fees for major fuel facilities, presented in the June 20, 1995, Federal Register, clearly states that the issued license is the source for determining authorized nuclear material and use/associated activity and is the determining factor in placing a licensee into one of the five fuel facility license fee categories created in the NRC's methodology. USEC argues that the GDPs are clearly in the low enriched fuel category on the basis of the issued licenses (certificates) and not in the high enriched-fuel category. USEC states that the NRC's proposal to put the GDPs into the same fee category as high enriched fuel facilities has not been justified by the cited NRC methodology and appears to be arbitrary and that the NRC has provided no basis for its conclusion that the relative weighted safety and safeguards factors for the GDPs are similar to a high enriched

uranium facility. USEC states that the annual fee for the GDPs should be the same as that proposed for other low enriched facilities, \$1,276,000 annually.

Response. NRC does not dispute that the GDPs have been certified as low enriched uranium facilities with corresponding safeguards measures for category III facilities. The NRC recognizes that DOE maintains sole regulatory responsibility for strategic special nuclear material that may be located at the Portsmouth GDP. The NRC methodology for determining annual fees for major fuel facilities, published in the June 20, 1995 Federal Register, (60 FR 32218, 32234), does state that the issued license is the source for determining authorized nuclear material and use/associated activity. However, it does not state that this information is the determining factor for placing a licensee into one of the five fee categories. The factors for placing a licensee into a fee category were stated as:

This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear material type, enrichment, form, quantity, and use/associated activity) and according to the scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category (emphasis added).

The nuclear material and activity at the GDPs, authorized by the certificates, does not automatically place the facilities into the high enriched fuel category. The scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to the GDPs, however, is approximately equivalent to that of a high enriched fuel facility.

As described in the GDP Safety Analysis Reports, the facilities are subject to a relatively large number of credible accidents, most of which have multiple initiating events. The potential onsite and offsite consequences posed by these accidents are significantly greater than those applicable to low enriched fuel facilities. The large size and scope of the GDP operations require substantially more effort for the development of inspection procedures, guidance, and schedules. This large size and scope is also expected to result in a higher number of reportable events that NRC staff must review.

The complexity, higher potential accident consequences, and large size and scope of the GDP operations require the NRC to provide generic regulatory programmatic effort that is of a scope, depth of coverage, and rigor equivalent to that for a high enriched fuel facility. This level of generic effort is the basis for assigning the two GDPs to the high enriched fuel facility category for the purpose of determining and assessing annual fees in FY 1997.

b. Comment. USEC also indicated that based on the March 16, 1993, D.C. Court of Appeals decision directing the NRC to grant Combustion Engineering an exemption from fees for one of its two low enriched uranium plants located in Hematite, Missouri and Windsor, Connecticut, it too deserves to be considered for an exemption because its two enrichment facilities are operationally equivalent to a single licensed facility because they are part of one process to produce enriched uranium product. Therefore, the commenter requests that the NRC reconsider the implication of the Court's holding with respect to the disproportionate allocation of its costs under 10 CFR 171.11(d), especially as the allocation of these costs adversely impacts the licensee.

Response. With respect to USEC's request that one of its certificates be exempt from annual fees, the D.C. Circuit Court of Appeals in Allied Signal, Inc. v. NRC, 988 F.2d 146 (D.C. Cir. 1993) directed the NRC to grant an exemption from annual fees to Combustion Engineering (CE) for one of its two low enriched uranium facilities. The NRC had previously denied the exemption request from CE. The Court found that the two facilities in the aggregate were operationally equivalent to the single-plant, single-license facilities of other low enriched uranium manufacturers. The Court concluded that "the argument that the "equal fee per license" rule is "unfair and inequitable" is persuasive only on the ground that the rule produced troubling results when applied to Combustion's circumstances." The Court

saw no reason for requiring the NRC to attend to that rather rare situation in the rule itself. Thus, consistent with the Court decision and 10 CFR Part 171, if USEC feels that based on the circumstances of its particular situation it can make a strong case to the NRC for an exemption from the FY 1997 annual fees then they should do so. The NRC will consider such requests for exemption under the provisions of 10 CFR 171.11(d). In accordance with 10 CFR Part 171.11(b), such requests for exemption must be filed within 90 days from the effective date of this final rule. The filing of an exemption request does not extend the date on which the bill is payable. If a partial or full exemption is granted, any overpayment will be refunded.

B. Other Comments

1. Eliminate the application fee for uranium enrichment facilities.

Comment. One commenter noted that an application fee of \$125,000 is required to accompany an application to construct and operate a uranium enrichment facility (\$170.31, fee Category 1.E.) and stated that the application fee is assessed in addition to the "full cost" to process the application. The commenter requests that the application fee for uranium enrichment facilities be eliminated to achieve fee equity among all materials licensees.

Response. Section 170.31, fee Category 1.E. of the Commission's regulations was established on June 1, 1992 (57 FR 18388). The change in the fee regulations was made to reflect changes made to the Atomic Energy Act of 1954 (as amended) by the Solar, Wind, Waste and Geothermal Power Production Incentives Act of 1990. The principal effect of these amendments is that uranium enrichment facilities will be licensed subject to the provisions of the Act pertaining to source and special nuclear material rather than under the provisions pertaining to a production facility. Previous to June 1992, uranium enrichment facilities were treated for fee purposes under \$170.21, the fee regulation that relates to reactors and other production and utilization facilities. As a result of the conforming changes made June 1, 1992, to the NRC's regulations, the category relating to uranium enrichment facilities, which included the application fee, was moved directly to the materials schedule in \$170.31. Licensees who pay the \$125,000 fee upon filing an application are given credit for the fee toward the full cost of processing the application. Licensees do not pay the full cost of processing plus the application fee of \$125,000. However, because other major fuel facilities covered by \$170.31 do not pay an application fee for a new license application, the NRC agrees with the commenter and has eliminated the \$125,000 application fee from \$170.31, fee Category 1.E.

2. Fees for amendments to medical licenses.

Comment. One commenter, while indicating support for fees to recover costs of NRC regulatory activities, questioned why such a high fee (\$460) would be required to amend a medical license to add another physician to the license.

Response. In developing the revised fee schedule, the NRC was obligated under Title V of the Independent Offices Appropriation Act of 1952 to examine the costs of processing license amendments not only for medical license fee Category 7C but also for all of its materials license fee categories. The amendment fee of \$460 was developed based on the "average-cost" method (flat fees) to process an amendment for medical licensees in fee Category 7C. Based on data for the last five years, the average number of hours expended to review and approve license amendments for licenses included in fee Category 7C is 3.7 hours of professional effort. An explanation of how the average number of hours are determined for materials licenses is found in Part IV, Section-by-Section Analysis, Section 170.31 of this final rule. To determine the amount of the amendment fee, the average hours to review and approve medical amendments (3.7 hours) was multiplied by the professional hourly rate (\$125/hour) to arrive at the amendment fee of \$460 for the medical license.

3. Fee legislation.

Comment. Several comment rs 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 change 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 and actively seek 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 1996 final rule (61 FR 16203; April 12, 1996), the NRC will continue to work with the Congress to make fees more fair and equitable. As part of its Strategic Assessment and Rebaselining initiative, the Commission considered issues associated with fees. After evaluation of comments from stakeholders, the Commission concluded that in order to make annual fees more fair and

equitable for all NRC licensees, the Commission must seek Office of Management and Budget and Congressional authorization to remove certain NRC activities that do not directly benefit NRC licensees from the fee base and instead fund those activities from non fee-based appropriations or separate appropriations. To this end, the Commission has requested the NRC staff to prepare an update to its February 1994 report to Congress on this matter.

4. Fees based on other factors.

Comment. One commenter, while understanding the need for NRC to be financially self-sufficient, was concerned about the effect of an 8 percent increase in annual fees on rural hospitals. The commenter states that the annual fees should be revised to take into account the small, low procedure volume, one room, one camera, diagnostic nuclear medicine department who pays the same annual fee as a large metropolitan hospital. Another commenter indicated that the NRC's intention to continue small entity and lower tier small entity fees based on market volume (gross annual receipts) is necessary and proper in order to aid in the survival of small firms.

Response. The issue of basing fees on the amount of material possessed, the frequency of use of the material, the size of the facilities, and market competitive positions, was 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, 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, supra.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1997 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1997, the NRC's budget authority is \$476.8 million, of which \$11.0 million has been appropriated from the NWF. In addition, \$3.5 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy

Hanford, Washington, site. The FY 1997 appropriation statute states that the \$3.5 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately \$462.3 million in FY 1997 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees.

The total amount to be recovered for FY 1997, and therefore the total fees, is the same as the amount estimated for recovery for FY 1996. However, the distribution of the total amount to be collected between the two types of fees is different. The NRC estimates that approximately \$95.2 million will be recovered in FY 1997 from fees assessed under 10 CFR Part 170 and other receipts compared to \$120.5 million in FY 1996. The remaining \$367.1 million in FY 1997 will be recovered through the 10 CFR Part 171 annual fees. Because the estimated 10 CFR Part 170 fees and other offsetting receipts for FY 1997 are below the estimates for FY 1996, annual fees must increase. The lower estimate for 10 CFR Part 170 fees plus other changes cause an 8.4 percent increase in FY 1997 annual fees compared to FY 1996. These changes are more fully explained in Section B. The following examples illustrate the changes in annual fees.

<u>Class of Licensees</u>	<u>FY 1996 Annual Fee</u>	<u>FY 1997 Annual Fee</u>

Power Reactors	\$2,746,000	\$2,978,000
Nonpower Reactors	52,800	57,300
High Enriched Uranium Fuel Facility	2,403,000	2,606,000
Low Enriched Uranium Fuel Facility	1,179,000	1,279,000
UF ₆ Conversion Facility	597,800	648,000
Uranium Mills	57,000	61,800
<u>Typical Materials Licenses</u>		
Radiographers	13,000	14,100
Well Loggers	7,500	8,200
Gauge Users	1,600	1,700
Broad Scope Medical	21,700	23,500

The amounts of the annual fees for some of the classes of licenses have slightly increased since the publication of the proposed fee in February 1997. The annual fees for a majority of the classes of licensees remain the same as those proposed. The reason for the increase in annual fees from those proposed for some of the classes is that the NRC has recently completed the third quarter billing in FY 1997 for 10 CFR Part 170 fees for services. The total estimate for 10 CFR Part 170 fee billings for the remainder of FY 1997 based on actual amount billed for the first three quarters is about \$800,000 below the estimate of \$96,000,000 used in the FY 1997 proposed rule. As a result, annual fees have been increased in this final rule 8.4 percent above the FY 1996 levels as compared to an 8.2 percent increase in the proposed rule. The amount of the increases from the proposed rule range from a low of \$100 for a radiographer, for example, to a high of \$6,000 for an operating power reactor and a high enrichment uranium facility.

Because the final FY 1997 fee rule will be a "major" final rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1997 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 1997 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1997 final rule will be billed at the FY 1997 revised rates 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.

Three amendments have been made to 10 CFR Part 170 and one change in practice under 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 NRC is amending §170.11 of the Commission's fee regulations to add an exemption provision for those amendments to materials portable gauge licenses issued in accordance with NUREG

1556, Volume 1, that will change only the name of the Radiation Safety Officer (RSO). This change is consistent with the proposed regulatory approach outlined in draft NUREG-1556, Volume 1, entitled "Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Portable Gauge Licenses" issued October 3, 1996, for public comment. No amendment fees will be assessed for the amendments to portable gauge licenses because the regulatory program outlined in NUREG-1556, Volume 1, includes commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application, then a technical review is not required. NUREG-1556, Volume 1, is expected to be finalized in May 1997.

Second, the two professional hourly rates established in FY 1996 in §170.20 are revised based on the FY 1997 budget. These rates are based on the FY 1997 direct FTEs and that portion of the FY 1997 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF or the General Fund. These rates are used to determine the Part 170 fees. The NRC has established a rate of \$131 per hour (\$233,055 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 \$125 per hour (\$222,517 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. In the FY 1996 final fee rule, these rates were \$128 and \$120 respectively.

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 distinguished. These costs include all salaries and benefits,

contract support, and travel that support each cost center activity.

Third, the NRC has adjusted the current Part 170 licensing and inspection fees in §§170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the biennial fee schedule review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license and amendment) for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Based on evaluation of the historical data related to the average number of professional staff hours needed to complete materials licensing actions, the NRC increased the fees in some categories and decreased the fees in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1995. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the nuclear materials professional hourly rate for FY 1997 of \$125 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1995 (60 FR 32218; June 20, 1995). For new materials licenses, the licensing fees for FY 1997 are increased in approximately 70 percent of the categories, while the proposed fees for materials amendments will increase in over 60 percent of the categories. In response to a comment received on the proposed rule, the NRC has eliminated the \$125,000 application fee from §170.31, fee Category 1.E.

In addition to these changes, the NRC is clarifying how it will recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§50.54, 50.59 and 70.32. Licensees will be billed for post-implementation review of these changes under §§170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions, including any review prior to licensee submissions, between NRC and licensees. As in the past, any pre-implementation interaction will not be fee bearing. The NRC plans to inform reactor licensees in the near future that their submittals under §50.54(a), (p) and (q) should not ask for pre-implementation reviews. Instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant paragraph of §50.54. The NRC will then verify that the changes are in compliance with §50.54.

In summary, the NRC has:

- (1) Revised the two 10 CFR Part 170 hourly rates;
- (2) Revised the licensing (application and amendment) fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service;
- (3) Added a provision to the regulations exempting from 10 CFR Part 170 fees certain amendments to materials portable gauge licenses issued in accordance with NUREG-1556 Volume 1 which is expected to be issued in May 1997;

- (4) Eliminated the \$125,000 application fee in §170.31 for fee Category 1.E.; and
- (5) Changed the procedure whereby charges under Part 170 will be made for post-implementation review of quality assurance plan, safeguards contingency plan and emergency plan changes.

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.

Six amendments have been made to 10 CFR Part 171. First, the NRC is amending §171.13 to revise the language to indicate that if the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC will continue to assess fees on the same basis as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991. However, as a contingency the NRC is amending the rule to permit NRC to meet the requirements of OBRA-90 in the case that unforeseen events prevent NRC from publishing a new rule during a fiscal year.

Second, the NRC is amending §§171.15 and 171.16 to revise the annual fees for FY 1997 to recover approximately 100 percent of the FY 1997 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. 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 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees.

In the FY 1996 final rule, the NRC stabilized the annual fees by establishing the annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. In this FY 1997 final rule, the NRC followed the same method as used in FY 1996. Because the total amount estimated for recovery through fees in FY 1997 is the same as the amount for FY 1996, establishing new baseline fees is not warranted for FY 1997. While the total amount to be collected is the same, the distribution between Part 170 and 171 fees has changed. In FY 1996, 26 percent was estimated to be collected from 10 CFR Part 170 fees. This decreases to 21% in FY 1997. Therefore, to recover 100 percent of the budget, 10 CFR Part 171 annual fees must increase in FY 1997 compared to FY 1996. The NRC is establishing the FY 1997 annual fees for all licensees at a level of 8.4 percent above the FY 1996 annual fees. The 8.4 percent increase results primarily from a reduction in the amount of the budget recovered for 10 CFR Part 170 fees, a reduction in other offsetting adjustments, and reduction in the number of licensees paying annual fees. In addition, the NRC has made adjustments to recognize that all fees billed in a fiscal year are not collected in that year. Table I shows the total budget and amounts of fee billed and collected for FY 1996 and FY 1997.

TABLE I

Calculation of the Percentage Change to the FY 1996 Annual Fees

(Dollars in Millions)

<u>FY96</u>	<u>FY97</u>
-------------	-------------

Total Budget	\$473.3	\$476.8
Less NWF	-11.0	-11.0
Less General Fund (Hanford Tanks)	<u>---</u>	<u>-3.5</u>
Total Fee Base	\$462.3	\$462.3
Less Part 170 Fees	114.5	95.2
Less other receipts	<u>6.0^{1/}</u>	<u>----</u>
Part 171 Fee Collections Required	\$341.8	\$367.1
<u>Part 171 Billing Adjustments^{2/}</u>		
Small Entity Allowance	4.9	5.0
Unpaid FY 1997 bills		3.0
Payments from prior year bills	<u>---</u>	<u>-2.0</u>
Subtotal	<u>4.9</u>	<u>6.0</u>
Total Part 171 Billing	\$346.7	\$373.1

^{1/} \$6 million in excess collections from FY 1995 were available to reduce FY 1996 annual fees.

^{2/} These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1997.

As shown in Table I, the total amount of annual fees to be billed in FY 1997 is \$26.4M (\$373.1-\$346.7) or 7.6 percent higher than the amount that was to be billed in annual fees in FY 1996. The NRC notes that the reduction in the estimates of 10 CFR Part 170 fees for FY 1997 is primarily in the areas relating to the review of applications for reactor operating licenses and the review of standard plant applications. In addition, for the first time, the estimates take into consideration an allowance for bad debt by estimating billings in the fiscal year that are

not projected to be collected in that fiscal year and collections received in the current fiscal year as a result of billings from a prior fiscal year. These adjustments to the annual fees will allow the NRC to come closer to meeting its obligation to recover approximately 100 percent of its budget authority through the assessment of fees.

In addition to changes in 10 CFR Part 170 fees and other adjustments, the number of licensees to pay fees in FY 1997 has decreased compared to FY 1996. This decrease in the number of licensees paying fees causes annual fees to increase by an additional 0.8 percent. For example, the Haddam Neck power reactor ceased operations in December 1996 and the fuel has been permanently removed from the reactor. Therefore, the utility will pay only a partial annual fee in FY 1997. In addition, Massachusetts became an Agreement State on March 21, 1997, and regulatory authority over approximately 425 NRC materials licenses was transferred to Massachusetts. These licensees will pay only one half of the annual fee for FY 1997.

Third, an annual fee is established in §171.16(d), fee Category 1.E., for each certificate of compliance issued to the United States Enrichment Corporation (USEC) on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky and at Piketon, Ohio. The NRC assumed regulatory jurisdiction over the two plants from the U.S. Department of Energy (DOE) on March 3, 1997.

Fourth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of annual fees for FY 1997 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, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval

holders who held a license or approval on October 1, 1996, are subject to FY 1997 annual fees. This change is being made in recognition of the fact that since the final FY 1996 rule was published in April 1996, 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 1996 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, 1996. Similar situations existed after the FY 1991-1995 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.

Fifth, the NRC has amended the proration provisions in §171.17 for reactor and materials licensees. The reactor provision in §171.17(a) is revised to reflect the changes in 10 CFR Part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). The materials provision is amended to recognize that licenses transferred to an Agreement State as a result of a new Agreement are effectively terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective.

Sixth, §171.19 is amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1997 either toward their total annual fee to be assessed or to make refunds, if necessary. This section is amended to modify the annual fee billing schedule for materials licenses terminated and new materials licenses issued during the fiscal year.

The NRC will send a bill to reactors and major fuel cycle

facilities for the amount of the annual fee upon publication of the FY 1997 final rule. For these licensees, payment will be due on the effective date of FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1997 rule will be billed, at the FY 1997 revised rates, during the anniversary month of the license and payment will be due on the date of the invoice.

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 final 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 would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

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 170.11 Exemptions.

This section is amended to add a new paragraph indicating that amendments to materials portable gauge licenses issued in

accordance with NUREG 1556, Volume 1, that change only the name of the Radiation Safety Officer (RSO) are exempt from amendment fees. No amendment fees will be assessed for the amendments issued in accordance with NUREG 1556, Volume 1, to portable gauge licenses because the regulatory program includes commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application then there is no technical review conducted by the NRC. NUREG-1556, Volume 1, is expected to be finalized in May 1997.

Section 170.20 Average cost per professional staff-hour.

This section is amended to establish two professional staff-hour rates based on FY 1997 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 1997 for all activities whose fees are based on full cost under §170.21 is \$131 per hour, or \$233,055 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 \$125 per hour, or \$222,517 per direct FTE. The rates are based on the FY 1997 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. 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 1997 Budget Authority to be Included in Hourly Rates
(Dollars in millions)

	<u>Reactor Program</u>	<u>Materials Program</u>
Salary and Benefits	\$155.3	\$48.4
Allocated Agency Management & Support	<u>42.5</u>	<u>13.2</u>
Subtotal	\$197.8	\$61.6
<u>General and Administrative Support (G&A)</u>		
Program Travel and Other Support	9.6	2.5
Allocated Agency Management and Support	<u>72.1</u>	<u>22.4</u>
Subtotal	\$81.7	\$24.9
Less offsetting receipts	<u>.1</u>	<u>----</u>
Total Budget Included in Hourly Rate	\$279.4	\$86.5
Program Direct FTEs	1,196.9	388.7
Rate per Direct FTE	\$233,055	\$222,517
Professional Hourly Rate	\$131	\$125

Dividing the \$279.4 million budget for the reactor program by the number of reactor program direct FTEs (1196.9) results in a rate for the reactor program of \$233,055 per FTE for FY 1997. Dividing the \$86.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (388.7) results in a rate of \$222,517 per FTE for FY 1997. The Direct FTE Hourly Rate for the reactor program is \$131 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$233,055) by the number of productive hours in one year (1776 hours) as indicated in the revised OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$125 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$222,517) by the number of productive hours in one year (1776 hours). The FY 1997 rate is slightly higher than the FY 1996 rate due in part to the Federal pay raise given to all Federal employees.

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 1997 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 1997 hourly rate for the reactor program, as shown in \$170.20. The fees in \$170.21 for the review of import and export licensing, facility Category K, are adjusted for FY 1997 to reflect both the increase in the hourly rate and the revised average professional staff hours needed to process certain types of licensing actions.

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 1997 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 both the revised average professional staff hours needed to process a licensing action (new license and amendment) and the increase in the professional hourly rate from \$120 per hour in FY 1996 to \$125 per hour in FY 1997.

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

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

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the materials program professional hourly rate of \$125 per hour for FY 1997. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1995 (60 FR 32218; June 20, 1995). Thus the revised hours used to determine the fees for FY 1997 reflect the changes in the licensing program that have occurred since that time. For new licenses, the fees for FY 1997 are increased in approximately 70 percent of the fee categories, while the fees for amendments have increased in over 60 percent of the fee categories.

The "flat" fees in \$170.31 for the review of licensing

applications have increased from FY 1996 as a result of the increase in the hourly rate and the results of the biennial review. 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 will be subject to the fees in this final rule.

The amounts of the materials 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 under \$1,000 are rounded to the nearest \$10. Fees that are greater than \$1,000 but are less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000.

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 \$125, as shown in §170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

In addition to these changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§50.54, 50.59 and 70.32. Licensees will be billed for

post-implementation reviews of these changes under §§170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions including any review prior to licensee submissions, between the NRC and licensees. As in the past, any pre-implementation interaction will not be fee-bearing. The NRC intends to inform reactor licensees, in the near future, that their submittals under §50.54(a), (p) and (q) should not ask for pre-implementation reviews. Instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant paragraph of §50.54. The NRC will then verify that the changes are in compliance with §50.54.

Part 171

Section 171.13 Notice.

The language in this section is revised to indicate that in the unlikely event the NRC is unable to publish a fee rule with an effective date within the current fiscal year, the NRC will continue to assess fees at the same rates as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991 when 100 percent fee recovery was initiated.

However, the possibility exists that the NRC might be unable to establish fees for a current fiscal year in a timely manner through the notice and comment process. Therefore, as a contingency plan for meeting the requirement of OBRA-90, the NRC is amending §171.13 to indicate that if the NRC is unable to promulgate a final fee rule within a current fiscal year, then fees will continue to be assessed at the same rates as the previous fiscal year. The NRC will continue to work diligently to publish the fee rules at the earliest possible time during the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses.

The annual fees in this section are revised as described below. Paragraphs (a), (b), (c) (1), (c) (2), (e), and (f) are revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1997.

Paragraph (b) is revised in its entirety to establish the FY 1997 annual fee for operating power reactors and to change fiscal year references from FY 1996 to FY 1997. The fees are established by increasing FY 1996 annual fees (prior to rounding) by 8.4 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170

fees as well as in the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

With respect to Big Rock Point, a smaller, older reactor, the NRC hereby grants a partial exemption from the FY 1997 annual fees similar to FY 1996 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 \$2,978,000 in FY 1997.

Paragraph (e) is revised to show the amount of the FY 1997 annual fee for nonpower (test and research) reactors. In FY 1997, the annual fee of \$57,300 is 8.4 percent above the FY 1996 level. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in §171.11(a)(2).

Paragraph (f) is revised to change fiscal year date references.

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 the final rule for convenience. 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.

Section 171.16(d) is revised to establish the FY 1997 annual fees for materials licensees, including Government agencies, licensed by the NRC. These fees were determined by increasing the FY 1996 annual fees (prior to rounding) by 8.4 percent.

In addition, an annual fee is established in §171.16(d), fee Category 1.E., for each Certificate of Compliance issued to the USEC on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. The NRC announced its intent to issue the compliance certificates to USEC on September 19, 1996 (61 FR 49360). The NRC assumed regulatory jurisdiction over the two plants from DOE on March 3, 1997. Because the two plants have been certified in FY 1997, the NRC is establishing an annual fee of \$2,606,000 for each of these two facilities. The NRC methodology for determining annual fees for major fuel facilities was explained in the FY 1995 final fee rule published in the Federal Register on June 20, 1995 (60 FR 32234). As indicated in the Federal Register, the methodology can be applied to determine annual fees for new licenses or certificates. The NRC has applied the methodology to the USEC facilities and has concluded that the relative weighted safety and safeguards factors for these facilities is similar to a high enriched uranium facility. Therefore, the NRC is establishing the annual fee for each USEC uranium enrichment facility at \$2,606,000, the same as that for a high enrichment facility (fee category 1.A.(1)(a)). Because the certifications are in effect for the last six months of FY 1997, the NRC will assess one-half of the annual fee or \$1,303,000 to USEC for each certificate for FY 1997.

The amount or range of the FY 1997 annual fees for all

materials licensees is summarized as follows:

Materials Licenses
Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel facility	\$2,606,000
Part 70 - Low enriched fuel facility	\$1,279,000
Part 40 - UF ₆ conversion facility	\$648,000
Part 40 - Uranium recovery facilities	\$22,300 to \$61,800
Part 30 - Byproduct Material Licenses	\$490 to \$23,500 ^{1/}
Part 71 - Trans-portion of Radioactive Material	\$1,000 to \$78,900
Part 72 - Independent Storage of Spent Nuclear Fuel	\$283,000

^{1/} Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$421,000.

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, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to the FY 1997 annual fees.

Section 171.17 Proration.

The NRC is amending the proration provisions in §171.17 for reactor and materials licenses. Paragraph (a) is amended to reflect the changes in 10 CFR Part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). Reactor annual fees will be prorated based on the requirements of §50.82(a)(2) that upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. Previously the proration of reactor annual fees was based on the date of issuance of the possession only license (POL).

Paragraph (b) is amended to recognize that materials licenses transferred to a new Agreement State are considered terminated by the NRC for annual fee purposes, on the date that the Agreement with the State becomes effective. The State of Massachusetts became an Agreement State on March 21, 1997, and approximately 425 materials licenses were transferred to the State on the effective date of the Agreement. The NRC will assess the annual fees for those licenses being transferred to the State of Massachusetts using the current proration provisions of §171.17(b) whereby the licenses will be considered terminated on the effective date of the Agreement with Massachusetts.

New licenses issued during FY 1997 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 in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1997, will not be assessed an annual fee for FY 1997. Thereafter, the full annual fee is due and payable each

subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees will be subject to 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.

Section 171.19 Payment.

Paragraph (b) is revised to give credit for partial payments made by certain licensees in FY 1997 toward their FY 1997 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1997 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) is revised to update fiscal year references. Paragraph (d) is revised to modify the billing schedule for terminated materials licenses and new materials licenses. Licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the

license.

As in FY 1996, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This applies 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. 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 would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1997 before the effective date of the FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1997 final rule will be billed, at the FY 1997 revised rates, during their anniversary month of their license and payment will be due on the date of the invoice.

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

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

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

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

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

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

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

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

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

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

the fee schedule;

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with §171.13, is publishing the final amount of the FY 1997 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 1997 budget of \$476.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program and the general fund related to commercial vitrification of waste at the Department of Energy Hanford, Washington site.

(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 1997. The final rule results in an increase 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. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1997.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

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

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

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

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

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

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L.
92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-
4381, 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 §170.11, paragraph (a)(11) is added to read as
follows:

§170.11 Exemptions.

(a) * * *

(11) Materials portable gauge licenses issued in
accordance with NUREG-1556, Volume 1, that are amended to change
only the name of the Radiation Safety Officer. This exemption
does not apply to those materials portable gauge licenses that
also authorize possession and use of nuclear materials for other
activities.

* * * * *

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)	\$131 per hour
Nuclear Materials and Nuclear Waste Program (\$170.31 Activities)	\$125 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/}
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* * * * *

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the export only of

components for production and utilization facilities issued pursuant to 10 CFR Part 110.

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

Application-new license	\$8,100
Amendment	\$8,100

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

Application-new license	\$5,000
Amendment	\$5,000

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

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

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

Application-new license	\$1,300
Amendment	\$1,300

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 \$190

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

^{2/} Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the

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

* * * * *

5. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

<u>Category of materials licenses and type of fees^{1/}</u>	<u>Fee^{2/}, 3/</u>
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1. Special nuclear material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

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

Application - New license	\$580
Amendment	\$390

- 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	\$780
Amendment	\$300

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

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 \$130
Amendment \$290

- C. All other source material licenses:

Application - New license \$3,700
Amendment \$580

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	\$3,900
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	\$1,600
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. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.

Application - New license	\$7,100
Amendment	\$650

- 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 includes licenses issued pursuant to §§32.72, 32.73, and/or 32.74 to nonprofit educational

institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).

Application - New license	\$2,000
Amendment	\$440

- 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	\$1,100
Amendment	\$390

- 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	\$2,000
Amendment	\$450

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

Application - New license	\$4,700
Amendment	\$760

- 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	\$2,800
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	\$4,500
Amendment	\$1,100

- 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	\$1,800
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Amendment \$310

- 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 \$1,000
Amendment \$350

- 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 \$5,600
Amendment \$780

- 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 \$1,900
Amendment \$640

- 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	\$2,100
Amendment	\$510

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

Application - New license	\$4,400
Amendment	\$700

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

Application - New license	\$750
Amendment	\$350

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	\$2,600
Amendment	\$540

- 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	\$2,300
Amendment	\$230

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	\$3,600
Amendment	\$850

- B. Licenses for possession and use of byproduct material

for field flooding tracer studies:

License, renewal, amendment . . . Full Cost

6. Nuclear laundries:

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

Application - New license \$6,600
Amendment \$1,000

7. Medical licenses:

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

Application - New license \$3,600
Amendment \$400

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

Application - New license \$3,900
Amendment \$740

- C. Other licenses issued pursuant to Parts 30, 35, 40, and

70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license	\$1,800
Amendment	\$460

8. Civil defense:

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

Application - New license	\$590
Amendment	\$410

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

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

Application - each device	\$3,700
Amendment - each device	\$610

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

Application - each device	\$2,200
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Amendment - each device \$1,100

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

Application - each source \$940

Amendment - each source \$630

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

Application - each source \$480

Amendment - each source \$160

10. Transportation of radioactive material:

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

Approval, Renewal, Amendment . . Full Cost

Inspections Full Cost

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

Application - Approval \$350

Amendment \$640

Inspections Full Cost

11. Review of standardized spent fuel facilities:

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

12. Special projects:^{5/}

Approvals and preapplication/ licensing activities		Full Cost
Inspections		Full Cost

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

Approvals	Full Cost
Amendments, revisions, and supplements	Full Cost
Reapproval	Full Cost

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

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

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

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

15. Import and Export licenses:

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

water, or nuclear grade graphite.

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

Application-new license	\$8,100
Amendment	\$8,100

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

Application-new license	\$5,000
Amendment	\$5,000

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

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

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

Application-new license	\$1,300
Amendment	\$1,300

- E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.

Amendment	\$190
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16. Reciprocity:

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

Application (initial filing of Form 241)	\$1,100
Revisions	\$200

^{2/} 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.

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

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

(d) Amendment/Revision Fees.

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

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

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

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

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

incurred. Inspection fees are due upon notification by the Commission in accordance with §170.12(g).

^{2/} Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

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

8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20. The minimum total review cost is twice the hourly rate shown in §170.20.

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, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

PART 171 -- ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF

CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE
PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

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

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

7. Section 171.13 is revised to read as follows.

§171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the FEDERAL REGISTER as soon as is practicable but no later than the third quarter of FY 1997 and 1998. The annual fees will become due and payable to the NRC in accordance with §171.19 except as provided in §171.17. Quarterly payments of the annual fees of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees will be assessed based on the rates in effect for the previous fiscal year.

8. In §171.15, paragraphs (a), (b), (c) introductory text,

(c) (1), (c) (2), (e), and (f) 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 1997 uniform annual fee for each operating power reactor which must be collected by September 30, 1997, is \$2,978,000. This fee has been determined by adjusting the FY 1996 annual fee upward by 8.4 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. 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.

* * * * *

(e) The FY 1997 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	\$57,300
Test reactor	\$57,300

(f) For FY 1997 and FY 1998, annual fees for operating reactors will be calculated and assessed in accordance with §171.13.

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

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

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1997 as follows:

Small Businesses Not Engaged
in Manufacturing and Small
Not-For-Profit Organizations
(Gross Annual Receipts)

Maximum Annual Fee
Per Licensed Category

\$350,000 to \$5 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 1997, 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 1997 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1997 annual fees, which must be collected by September 30, 1997, have been determined by adjusting upward the FY 1996 annual fees by 8.4 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. 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 for convenience 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)

<u>Category of materials licenses</u>		<u>Annual Fees</u> ^{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	\$2,606,000
Nuclear Fuel Services	SNM-124	\$2,606,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:		
Combustion Engineering		
(Hematite)	SNM-33	\$1,279,000
General Electric		
Company	SNM-1097	\$1,279,000
Siemens Nuclear Power	SNM-1227	\$1,279,000
Westinghouse Electric	SNM-1107	\$1,279,000

Company

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

(a) Facilities with limited operations:

B&W Fuel Company	SNM-1168	\$509,000
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(b) All Others:

General Electric	SNM-960	\$346,000
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- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). \$283,000
- C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. \$1,300
- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed

form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2). \$3,100

E. Licenses or certificates for the operation of a uranium enrichment facility. \$2,606,000

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride. \$648,000

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

(tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.

Class I facilities⁴ \$61,800

Class II facilities⁴ \$34,900

Other facilities⁴ \$22,300

(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). \$45,300

(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). \$8,000

B. Licenses which authorize only the

possession, use and/or installation of
source material for shielding. \$490

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

3. Byproduct material:

A. Licenses of broad scope for possession
and use of byproduct material issued
pursuant to Parts 30 and 33 of this
chapter for processing or manufacturing
of items containing byproduct material
for commercial distribution. \$16,600

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. \$5,600

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. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D. \$11,200

- D. Licenses and approvals issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§32.72, 32.73 and 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category

- also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$4,400
- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). \$3,200
- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$3,800
- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which

the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$19,700

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

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

redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. \$8,900

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

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

that have been authorized for distribution
to persons generally licensed under
Part 31 of this chapter. \$3,300

L. Licenses of broad scope for possession
and use of byproduct material issued
pursuant to Parts 30 and 33 of this
chapter for research and development
that do not authorize commercial
distribution. \$12,300

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. \$5,500

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. \$6,100

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license. \$14,100

P. All other specific byproduct material licenses, except those in Categories 4A through 9D. \$1,700

4. Waste disposal and processing:

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

nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.

\$2,000²/

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. \$14,500
- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or

dispose of the material.

\$7,700

5. Well logging:

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

\$8,200

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

\$13,200

6. Nuclear laundries:

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

\$14,700

7. Medical licenses:

- A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for

human use of byproduct material,
source material, or special nuclear
material in sealed sources contained in
teletherapy devices. This category also
includes the possession and use of source
material for shielding when authorized on
the same license. \$10,300

B. Licenses of broad scope issued to
medical institutions or two or more
physicians pursuant to Parts 30, 33,
35, 40, and 70 of this chapter
authorizing research and development,
including human use of byproduct
material except licenses for byproduct
material, source material, or special
nuclear material in sealed sources
contained in teletherapy devices. This
category also includes the possession
and use of source material for shielding
when authorized on the same license.^{2/} \$23,500

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

special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.^{2/}

\$4,700

8. Civil defense:

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

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

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

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

10. Transportation of radioactive material:

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

Spent Fuel, High-Level Waste, and plutonium air packages	N/A ^{5/}
Other Casks	N/A ^{5/}

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

Users and Fabricators	\$78,900
Users	\$1,000

11. Standardized spent fuel facilities. N/A^{5/}

12. Special Projects N/A^{5/}

- 13.. A. Spent fuel storage cask Certificate of Compliance. N/A^{5/}

- B. General licenses for storage of spent fuel under 10 CFR 72.210. \$283,000

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

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

15.	Import and Export licenses	N/A ^{8/}
16.	Reciprocity	N/A ^{8/}
17.	Master materials licenses of broad scope issued to Government agencies.	\$421,000
18.	Department of Energy:	
	A. Certificates of Compliance	\$1,168,000 ^{10/}
	B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	\$1,965,000

^{1/} Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be

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

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

^{3/} For FY 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, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

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

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

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

10/ This includes Certificates of Compliance issued to DOE that

are not under the Nuclear Waste Fund.

(e) The activities comprising the 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.

* * * * *

10. In §171.17, introductory text, paragraphs (a) (b) introductory text, and (b) (1) are revised to read as follows:

\$171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors. The annual fee for reactors (power and nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full fee is due and payable each subsequent fiscal year. Licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect.

(b) Materials licenses (including fuel cycle licenses).

(1) New licenses and terminations. The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses

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

* * * * *

11. In §171.19, paragraphs (b), (c), and (d) are revised to read as follows:

§171.19 Payment.

* * * * *

(b) For FYs 1997 and 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. 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 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.

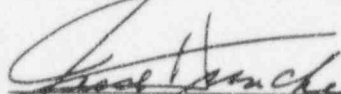
(c) For FYs 1997 and 1998, annual fees in the amount of \$100,000 or more and described in the Federal Register notice pursuant to §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FYs 1997 and 1998, annual fees of less than \$100,000 must be paid as billed by the NRC. As established in FY 1996, materials license annual fees that are less than \$100,000 are billed on the anniversary of the license. The materials licensees that are 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. Beginning June 11, 1996, 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. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

Dated at Rockville, Maryland, this 12th day of May,
1997.

For the Nuclear Regulatory Commission.



Jesse L. Funches,
Chief Financial Officer.

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, as amended, (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 and FY 1996 fee rules and is continuing their use in this FY 1997 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 1997 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; for FY 1996 about \$462.3 million and the amount to be collected in FY 1997 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) in FY 1995 (60 FR 32218; June 20, 1995) and in FY 1996 (61 FR 16203; April 12, 1996) 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 1991-1996.

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 adjustments as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is establishing the FY 1997 annual fees for all licensees at 8.4 percent above the FY 1996 annual fees. Because the total amount to be recovered through fees in FY 1997 is the same as the amount estimated for recovery in FY 1996, the NRC believes that establishing new baseline fees for FY 1997 is not warranted.

Public Law 104-121, the Contract with America Advancement Act of 1996 was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a "major" rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. The NRC's guide is Attachment 1 to Appendix A of this final rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR Part 170 and 171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1997.

II. Impact on small entities.

The comments received on the proposed FY 1991-1996 fee rule revisions and the small entity certifications received in

response to the final FY 1991-1996 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 20 percent (approximately 1,400 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

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

- Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be

more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

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

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

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

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

operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993); in the FY 1994 rule (59 FR 36895; July 20, 1994); in the FY 1995 rule (60 FR 32218; June 20, 1995) and in the FY 1996 rule (61 FR 16203; April 12, 1996). 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 1991-1996 evaluations of 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 will continue for FY 1997, 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 1997, 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 1997, 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 1997 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 significantly. Therefore, the NRC is continuing, for FY 1997, 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 1992-1996, 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 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 1991-1996 rules remain valid for this final rule for FY 1997. In compliance with Public Law 104-121, a small entity compliance guide has been prepared by NRC and is shown as Attachment 1 to this Regulatory Flexibility Analysis.

ATTACHMENT 1 TO APPENDIX A

U. S. Nuclear Regulatory Commission
Small Entity Compliance Guide
Fiscal Year 1997

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, meets the thresholds for being considered "major" under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1997. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1997 annual fees assessed under 10 CFR Part 171. Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195-4514.

The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC and became effective on May 11, 1995. The small entity size standards are found in 10 CFR 2.810 of the NRC's regulations. To

comply with the RFA, the NRC has established two tiers of small entity fees. These fees are found in 10 CFR 171.16(c) of the fee regulations.

NRC Definition of Small Entity

The NRC has defined what is a small entity for purposes of its regulations in consultation with the Small Business Administration. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, small entities are:

1. Small business - a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;
2. Manufacturing industry - a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;
3. Small organization - a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;
4. Small governmental jurisdiction - a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;
5. Small educational institution - an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer

employees¹

NRC Small Entity Fees

The NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

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

¹ An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

(Population)

20,000 to 50,000	\$1,800
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Less than 20,000	\$400
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Educational Institutions that
are not State or Publicly
Supported, and have 500 Employees
or Less

35 to 500 employees	\$1,800
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Less than 35 employees	\$400
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To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee bill, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee. Approximately 900 licensees pay the small entity fee of \$1,800 while 500 licensees pay the lower-tier small entity fee of \$400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.
2. Complete all items on NRC Form 526 as follows:
 - a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.
 - b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

- c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.
- d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:
- (1) The size standards apply to the licensee, not the individual authorized users listed in the license.
 - (2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth in 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.
 - (3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

- (4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.
3. The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$1,800 or \$400, for each fee category shown on the invoice depending on the size of the entity. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies resulting in a fee of either \$900 or \$200 for each fee category billed instead of the full small entity annual fee of \$1,800 or \$400.
4. A new small entity form is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed form, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission,

License Fee and Accounts Receivable Branch, P.O. Box 954514,
St. Louis, MO 63195-4514.

5. Questions regarding fee bills may be posed orally or in writing. Please call the license fee staff at 301-415-7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.
6. False certification of small entity status could result in civil sanctions being imposed by the NRC pursuant to the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found in 10 CFR Part 13.