

**NUCLEAR REGULATORY COMMISSION****10 CFR Parts 170 and 171**

RIN 3150-AG08

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

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

**DATES:** The comment period expires May 3, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90 requires that NRC collect the FY 1999 fees by September 30, 1999, requests for extensions of the comment period will not be granted.

**ADDRESSES:** Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678). Comments may also be submitted via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). From the NRC homepage, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum". This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may be examined at the NRC

Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001. Comments received may also be viewed and downloaded electronically via the interactive rulemaking website established by the NRC for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:**

Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6057.

**SUPPLEMENTARY INFORMATION:**

- I. Background.
- II. Proposed Action.
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**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 Nuclear Waste Fund (NWF), for FYs 1991 through 1995 by assessing fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998. In 1998 OBRA-90 was amended to extend the NRC's 100 percent fee recovery requirement through FY 1999.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established 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.

**II. Proposed Action**

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF

and the General Fund. For FY 1999, the NRC's budget authority is \$469.8 million, of which \$17.0 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this \$3.2 appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately \$449.6 million in FY 1999 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. The total amount to be recovered in fees for FY 1999 is \$5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

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

The NRC estimates that approximately \$107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to \$94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost under Part 170 for resident inspectors, and a \$4.1 million carryover from additional collections in FY 1998 that were unanticipated at the time the final FY 1998 fee rule was published. In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately \$2.1 million for payments received in FY 1999 for FY 1998 invoices. The remaining \$339.8 million would be recovered in FY 1999 through the 10 CFR part 171 annual fees, which is approximately \$20.4 million less than in FY 1998.

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

TABLE 1.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 1999

[Dollars in Millions]

Total Budget .....	\$469.8
Less NWF .....	– 17.0
Less General Fund (Reviews for DOE and other Federal agencies) .....	– 3.2
Total Fee Base .....	449.6
Less Part 170 Fees .....	– 103.5
Less other receipts .....	– 4.2
Part 171 Fee Collections Required .....	341.9
Part 171 Billing Adjustment <sup>1</sup>	
Unpaid FY 1999 invoices .....	3.4
Less Payments received in FY 1999 for prior year invoices .....	– 5.5
Subtotal .....	– 2.1
Adjusted Part 171 Collections Required .....	339.8

<sup>1</sup> 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 1999.

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

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

In addition to publication in the **Federal Register**, the final rule will be available on the internet at <http://ruleforum.llnl.gov/>. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at [fees@nrc.gov](mailto:fees@nrc.gov). It is our intent to publish the final rule in June of 1999.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A. and B. below:

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

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

The major changes to 10 CFR part 170 proposed by the NRC are:

**1. Expanded Part 170 Cost Recovery**

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

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

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

Part 170 fees are currently assessed for:

- (a) The review of applications for and the issuance of licensing actions or other approvals;
- (b) The review and approval of topical reports;
- (c) Preapplication consultations and reviews;
- (d) Inspections; and
- (e) The costs of maintaining resident inspectors.

The remainder of NRC’s budget authority is recovered through annual fees assessed under part 171.

In the NRC’s FY 1998 fee rulemaking, steps were taken to more appropriately recover costs for certain activities through part 170 fees rather than through part 171 fees. The NRC’s proposals to further expand the scope of part 170 for FY 1999 would result in cost recovery for additional activities through part 170 fees rather than through part 171 fees.

**a. Inspections**

Under this proposed change, part 170 fees would be assessed for all inspections, including licensee-specific performance reviews, assessments, evaluations and incident investigations. Examples of activities that would be billable under part 170 are performance assessments of fuel facilities, Diagnostic

Evaluation Team assessments, and Incident Investigation Team investigations. Licensees who volunteer to participate in a performance review or assessment at NRC's request and which the NRC accepts would be exempted from these part 170 fees. The inspections that are proposed to be included in part 170 are "special benefits" provided to identifiable recipients, whether or not an inspection report is issued. For example, incident investigations are investigations of significant operational events involving power reactors and other facilities. Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, would continue to be recovered through part 171 annual fees, not through part 170 fees assessed to the licensee. In addition, any time expended by our Office of Investigations on these activities will be recovered through part 171 fees. These proposed part 170 fees would not apply to materials licenses for which no inspection fee is specified in part 170 because the inspection costs are included in the part 171 annual fee for those fee categories.

#### **b. Additional Document Reviews**

The NRC is also proposing to expand the scope of part 170 to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) final safety analysis reports (FSARs). part 170 fees are currently not assessed for these reviews because they do not result in an approval or amendment, and the costs are recovered through part 171 annual fees. Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

#### **c. Project Manager Time**

Additionally, the NRC is proposing that all project managers time,

excluding leave and time spent on generic activities such as rulemaking, be recovered through Part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned. This change would be applicable to all licensees subject to full cost fees under Part 170 and to which project managers are assigned. Currently, only project manager time spent on a specific licensing action or inspection is billed under Part 170 and costs for the remaining project manager activities are recovered in the Part 171 annual fees. However, there are other project manager activities that also support and provide a direct benefit to the assigned licensee or site.

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

#### **d. Other**

The NRC is also soliciting public comment in this proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. The costs of these activities are currently recovered through Part 171 annual fees.

#### *Orders and Related Activities*

Currently, Part 170 fees are not assessed for the development of orders issued under 10 CFR 2.202, or for the

issuance of amendments specifically resulting from these orders. The primary basis for the current policy is that fees could be perceived as additional fines to the licensee, or in some cases, such as when a licensee requests a hearing on an enforcement order, fees could be viewed as a penalty for the licensee exercising its rights to challenge the NRC action. In addition, depending on the licensees' responses, orders may also be withdrawn or modified. Moreover, in cases of misconduct, an order may be issued to the individual rather than the licensee. On the other hand, the development of orders and the review of responses to orders are activities performed for specifically identifiable recipients.

#### *Escalated Enforcement Actions*

Although costs of inspections forming the basis for enforcement actions, except those arising from an allegation, are currently recovered through Part 170 fees assessed to the affected licensee, the costs for escalated enforcement actions (i.e., the development and issuance of Notices of Violations and orders imposing civil penalties) are not. Part 170 fees are not currently assessed for the escalated enforcement actions because they serve the generic purpose of industry-wide deterrence. In addition, some escalated enforcement actions are withdrawn. There also is concern that in some cases the fee could be much greater than the civil penalty, which is intended to encourage a licensee to comply with the NRC requirements. As with orders issued under 10 CFR 2.202, fees could be viewed as a penalty for the licensee exercising its rights to challenge the NRC action. However, escalated enforcement actions are activities performed by the NRC which pertain to identifiable licensees.

#### **2. Amendment Fees Based on Average Costs**

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

Although approximately 2500 requests for amendments to small

materials licenses are received and processed each year for fee recovery purposes, less than \$900,000 in Part 170 fees is collected annually for these amendments. The number of amendments, as well as the Part 170 fee collections, will decrease as more states become Agreement States.

The current approach for assessing materials license amendment fees is complex and labor intensive. Approximately 25 percent of the amendment requests are submitted with incorrect fee payments. In the case of underpayment, the licensee must be notified and the license amendment held in abeyance until the correct fee is received. In the case of overpayments, refunds must be authorized and processed through the Department of the Treasury (Treasury). Because of Treasury requirements that all Federal payments (other than payments made under the Internal Revenue Code of 1986) made after January 1, 1999, must be made by electronic funds transfer, information on the payee's financial institution and bank accounts must be collected.

These administrative burdens for flat amendment fees would be eliminated by including the amendment costs in the Part 171 annual fee assessed to these licensees. This would result in an estimated \$900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

Amendment fees for these licensees currently range from \$160 for an amendment to a custom sealed source evaluation (fee category 9D) to \$1,100 for an amendment to a custom device evaluation (fee category 9B). The majority of the amendments are filed by licensees in fee category 3P, which includes licenses for possession and use of byproduct material in industrial measuring systems and gas chromatographs, and licenses for in-vitro studies, and by licensees in fee category 7C, which covers most licenses for human use of byproduct, source, and special nuclear material. The current amendment fee for fee category 3P is \$340; the current amendment fee for fee category 7C is \$450. Although not all materials licensees request amendments during a given fiscal year, approximately 80 percent request at least one amendment over a five-year period, and approximately 40 percent of these licensees request multiple amendments during a five-year period.

In addition to streamlining the NRC process, this proposed change would eliminate the steps licensees currently take to submit the payments for their amendment requests. It would also eliminate any delays in approving

proposed amendments due to incorrect payments and would provide an efficient means of recovering these costs. The NRC believes that the efficiencies to be gained outweigh any inequities that may result because not all materials licenses are amended each fiscal year.

If we do not adopt this approach, amendment fees set forth in the final fee rule would likely approximate those set forth in the FY 1998 fee schedule, although there may be some variance as a result of the biennial fee review required by the Chief Financial Officers Act and the increase in the hourly rate for the materials program described below.

### 3. Hourly Rates

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

This proposed increase can be readily explained. In calculating the proposed FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the proposed FY 1999 hourly rates reflect an increase of \$17—\$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately \$10 million in contract support for regional management and support were erroneously coded as direct resources

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

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

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

- a. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.
- b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.
- c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1999 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries and Benefits .....	\$99.2m .....	\$26.4m
Overhead Salaries and Benefits, Program Travel and Other Support .....	\$54.1m .....	\$15.0m
Allocated Agency Management and Support .....	\$104.2m .....	\$28.1m
Subtotal .....	\$257.5m .....	\$69.5m
Less offsetting receipts .....	— .1m.	
Total Budget Included in Hourly Rate .....	\$257.4m .....	\$69.5m
Program Direct FTEs .....	1,028.0 .....	279.7
Rate per Direct FTE .....	\$250,403 .....	\$248,728
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours) .....	\$141 .....	\$140

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

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

#### 4. Fee Adjustments

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

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing

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

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

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

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

#### 5. Administrative Amendments

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

b. The NRC is proposing to revise the definition of *Inspection*, to specifically include performance assessments, evaluations, and incident investigations. This change is needed to incorporate NRC's proposal to include these activities in Part 170.

c. The NRC is proposing to revise the definition of *Special projects* to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 final safety analysis reports in the list of examples of documents submitted for review that would be subject to special project fees. This change is needed to incorporate NRC's proposal to include the review of these documents in Part 170.

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

in the Commission under 10 CFR parts 170 and 171.

e. The NRC is proposing to delete the current exemption in § 170.11(a)(11) which eliminates amendment fees for amendments to change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG-1556,<sup>1</sup> Volume 1. This proposed rule would eliminate the requirement for amendment fees for these licenses and thus the exemption would no longer be needed.

f. The NRC is proposing to add 170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee volunteers at NRC's request. This change would accommodate NRC's proposal to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is proposing to revise § 170.12, Payment of Fees, to reflect the NRC's proposals to expand Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section would also be revised to delete references to amendment fees that are not based on full cost to reflect the NRC's proposal to eliminate these fees from Part 170 and include the costs in the Part 171 annual fee for these materials licensees.

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

In summary, the NRC is proposing to:

1. Assess Part 170 fees, for licensees subject to Part 170 full cost fees, to recover costs for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the project managers' time excluding time spent on generic activities and leave time;

2. Eliminate "flat" amendment fees for materials licenses and recover the amendment costs through Part 171

annual fees assessed to materials licensees;

3. Revise the two 10 CFR part 170 hourly rates; and

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

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

The NRC proposes three major amendments to 10 CFR part 171 and several administrative amendments to update information in certain sections and to incorporate the major proposed changes. These major changes would result in annual fees being assessed to licensees previously exempted from annual fees, increased annual fees for some licensees, and decreased annual fees for other licensees. To address concerns about potential significant fee increases for certain categories of licensees, the NRC is presenting two annual fee options for public comment, as described in 2. below. The Commission will determine which option to incorporate in its final rule after evaluating public comments.

The proposed changes are consistent with our statutory mandate; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692-93). Costs not attributable to a class of licensees would be allocated following the conferees' guidance that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." (136 Cong. Rec. at H12692-3). The Conference Report guidance also provides that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly,

equitably and practicably contribute to their payment." As in the past, these costs would be allocated to the entire population of NRC licensees that pay annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

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

**1. Reactor Decommissioning/spent Fuel Storage**

The NRC is proposing to revise 10 CFR 171.15 to establish a spent fuel storage/reactor decommissioning annual fee to be assessed to all Part 50 power reactor licensees, regardless of their operating status, and to those Part 72 licensees who do not hold a Part 50 license. The full amount of the FY 1999 annual fee would be billed to those Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment would be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee would be added to the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 would be made in accordance with § 171.19(b). The current annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage would be eliminated.

This proposed change would affect two existing NRC annual fee policies:

- (a) Costs for generic and other activities related to dry storage of spent fuel that are not recovered through Part 170 licensing and inspection fees are recovered through Part 171 annual fees assessed to all Part 72 licensees; and

- (b) Part 171 annual fees are not assessed to reactor licensees in decommissioning or possession only status. Power reactor licensees who are in a decommissioning or possession only status would, for the first time, be subject to Part 171 annual fees for their Part 50 license. However, these licensees currently pay an annual fee for any Part 72 license they hold.

The current policy has raised three concerns:

- (a) The fee structure could create a disincentive for licensees to pursue dry storage;

- (b) The fairness of assessing multiple annual fees if a licensee holds multiple ISFSI licenses for different designs; and

- (c) Not all affected licensees are being assessed the costs of NRC's generic decommissioning activities.

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

The NRC announced in the FY 1998 proposed fee rulemaking (April 1, 1998, 63 FR 16046) and final fee rulemaking (June 10, 1998, 63 FR 31840), that it planned to reexamine the current annual fee exemption policy for licensees in decommissioning or holding possession only licenses and the annual fee policy for reactors' storage of spent fuel and include any changes to the current fee policies in the FY 1999 fee rulemaking. One purpose of the review was to assure consistent fee treatment for both wet storage (i.e., spent fuel pool) and dry storage (i.e., independent spent fuel storage installations (ISFSIs)) of spent fuel. The Commission previously determined that both storage options are considered safe and acceptable forms of storage for spent fuel. Under current fee regulations, Part 50 licensees in decommissioning who store spent fuel in the spent fuel pool are not assessed an annual fee, but licensees who store spent fuel in an ISFSI under Part 72 are assessed an annual fee. The proposed change would give equivalent fee treatment to both storage options.

As indicated previously, Part 171 annual fees are not currently assessed to reactor licensees who have notified the NRC that they no longer want an NRC license and have permanently ceased operations. This policy is based on the premise that the primary benefit the NRC provides a licensee is the authority to use licensed facilities or material. Although NRC's generic decommissioning activities support both licenses authorizing operations and those limited to decommissioning or possession only, today only licensees with an operating license bear these costs. This becomes a larger problem for operating licensees because, as the number of operating licensees declines, the financial burden on the remaining active licensees increases. Thus, the proposed rule is intended to ensure that all power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

With regard to spent fuel storage, holders of licenses issued under Part 72 for ISFSIs are currently assessed annual fees for each Part 72 license they hold. Part 72 covers both general and specific licenses. Part 72 general licenses are granted to licensees who hold a Part 50 license. Part 72 specific licenses must be applied for and their issuance is not contingent upon the licensee holding a Part 50 license. Because the Part 72 general licenses are issued by regulation to all Part 50 licensees, these licenses are subject to annual fees only when they have been used (i.e., once spent fuel

has been loaded into the generally-licensed ISFSI). If a licensee holds more than one Part 72 license, for example, a Part 72 general license and a Part 72 specific license for two different designs, they are assessed an annual fee for each license. Under the proposed change, only one annual fee would be charged.

Costs for generic activities associated with storage of spent fuel in the spent fuel pool (wet storage) are currently included in the annual fee assessed to operating power reactors because the Part 50 licenses cover this storage. Thus, if a Part 50 licensee is in decommissioning and stores spent fuel in the spent fuel pool, it is not assessed an annual fee. On the other hand, if a Part 50 licensee is in decommissioning and stores spent fuel in an ISFSI, it is assessed an annual fee for each Part 72 ISFSI license used.

Section 171.15 would be revised to include the spent fuel storage/reactor decommissioning annual fee to be assessed to Part 50 power reactor licensees and those Part 72 specific licensees who do not hold a Part 50 license. The annual fees in § 171.16 for fee categories 1B and 13B would be eliminated. This change would not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees would still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC would continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

## 2. Annual Fees

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

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

For FY 1996 through FY 1999, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the

magnitude of the budget allocated to a specific class of licensees. If either condition occurred, the annual fee base would be recalculated. The percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. This method of determining annual fees is the "percent change" method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

## Rebaselining

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

## Rebaselining Options

The NRC is specifically seeking public comment on two optional rebaselining methods for establishing the FY 1999 annual fees:

Option A, rebaselining without a cap; and

Option B, rebaselining with a cap so that no licensee's annual fee increases more than 50 percent from FY 1998.

Option A would result in a reduction in annual fees from FY 1998 of approximately 6.8 percent for each operating power reactor, which includes the proposed spent fuel storage/decommissioning annual fee to be assessed to these licensees, and reductions of approximately 7 to 49 percent for certain materials licensees. However, annual fees would increase dramatically for certain other licensees. For example, rebaselining without a cap would result in an increase of approximately 112 percent for conventional mills for extraction of uranium from uranium ores, 212 percent for solution mining licensees, 120 percent for transportation cask users, and up to approximately 57 percent for certain other materials licensees. Factors contributing to the annual fees increases are changes in budgeted costs for those classes of

licensees, the increased hourly rates, decreases in the numbers of licensees and, for the smaller materials licensees, the results of the biennial review of Part 170 fees required by the CFO Act. The biennial review shows that the average number of professional hours to conduct inspections and to review new license applications for materials licensees increased for some fee categories and decreased for other fee categories. The average time to conduct inspections and the average time to review new license applications for the smaller materials license fee categories are used to allocate the materials budget for rebaselining the annual fees because they reflect the complexity of the license. Increases in the average professional time for inspections and reviews of new license applications result in increased annual fees for the

affected fee categories if all else remains the same. In addition, rebaselining reflects the renewal and amendment costs that would be included in the annual fee for these materials licensees, which were not included in FY 1995.

Option B would also result in annual fee decreases for FY 1999 for operating power reactor licensees and certain materials licensees and increases for other licensees. However, the increases would be no more than 50 percent of the FY 1998 annual fee. The decreases for certain licensees under Option B would be slightly less than under Option A because the 50 percent cap on annual fee increases would result in approximately \$700,000 being added to the annual fee assessed to other licensees who pay annual fees. Because approximately 80 percent of the FY 1999 surcharge would be assessed to

operating power reactors, the net result of Option B would be a reduction of approximately 6.75 percent in annual fees for FY 1999 for operating power reactors compared to a reduction of approximately 6.95 percent under Option A, a difference of approximately \$6,000 for each power reactor. The decreases under both options include the new spent fuel storage and reactor decommissioning annual fee to be assessed to operating power reactor licensees. Other licensees whose rebaselined annual fees do not increase by 50 percent or more would also pay slightly more under Option B than they would under Option A.

Table III below shows the FY 1999 proposed annual fees under both rebaselining options for representative categories of licensees.

Table III

Class of licensees	Proposed FY 1999 annual fee	
	Option A (without a cap)	Option B (with a cap)
Power Reactors (including spent fuel storage/reactor decommissioning annual fee) .....	\$2,769,000	\$2,775,000
Spent fuel storage/reactor decommissioning .....	199,000	199,000
Nonpower Reactors .....	85,900	85,600
High Enriched Uranium Fuel Facility .....	3,281,000	3,288,000
Low Enriched Uranium Fuel Facility .....	1,100,000	1,103,000
UF <sub>6</sub> Conversion Facility .....	472,000	473,000
Uranium Mills .....	131,000	92,100
Solution Mining .....	109,000	52,100
Transportation:		
Users and Fabricators .....	66,700	66,800
Users only .....	2,200	1,500
Typical Materials Licensees:		
Radiographers .....	14,700	14,700
Well loggers .....	9,900	10,000
Gauge users .....	2,600	2,500
Broad scope medical .....	27,800	27,800
Broad scope manufacturers .....	26,000	24,800

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

TABLE IV—SURCHARGE

Category of costs	FY 1999 budgeted costs (\$, M)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities .....	6.3
b. Agreement State oversight .....	6.4
c. Low-level waste disposal generic activities, and .....	4.1
d. Site decommissioning management plan activities not recovered under Part 170 .....	4.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit education institutions .....	6.9
b. Licensing and inspection activities associated with other Federal agencies .....	2.8
c. Costs not recovered from small entities under 10 CFR 171.16(c) .....	5.3
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States .....	14.6
b. Decommissioning/reclamation, except those related to power reactors .....	4.2



TABLE IV—SURCHARGE—Continued

Category of costs	FY 1999 budgeted costs (\$, M)
Total Budgeted Costs .....	55.2

The NRC would continue to allocate the surcharge costs, except LLW surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume disposed by the certain classes of licensees. The proposed surcharge costs allocated to each class are included in the annual fee that would be assessed to each licensee. The FY 1999 surcharge costs that would be allocated to each class of licensee are shown in Table V.

TABLE V.—ALLOCATION OF SURCHARGE

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

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3. and 4. below. The workpapers which support this proposed rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The workpapers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001.

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

month of the license and payment would be due on the date of the invoice.

In addition to comments on the rebaselining method for determining FY 1999 annual fees, public comments are also being sought on whether the NRC should, in future years, continue to use the percent change method and rebaseline fees every several years as established in the FY 1995 fee rule statement of considerations, or return to a policy of rebaselining annual fees every year.

### 3. Revised Fuel Cycle and Uranium Recovery Matrixes

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

#### a. Fuel Facility Matrix

The NRC is proposing to use a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in the annual fees more accurately reflecting our current costs of providing generic and other regulatory services to each fuel facility type.

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

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC

recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders, resulting in a higher

fee for those remaining in the fee category.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits

into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

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

	No. of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel .....	2	91 (33.1%) .....	76 (54.7%)
Enrichment .....	2	70 (25.5%) .....	34 (24.5%)
Low Enriched Uranium Fuel .....	4	88 (32.0%) .....	24 (17.3%)
UF6 Conversion .....	1	8 (2.9%) .....	3 (2.2%)
Limited Operations Facility .....	1	12 (4.4%) .....	0 (0%)
Others .....	1	6 (2.2%) .....	2 (1.4%)

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

#### b. Uranium Recovery Matrix

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

The NRC is proposing to revise the matrix established in FY 1995 for

establishing the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

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

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

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

(3) The two major program elements of the generic uranium recovery

program are activities related to facility operations and those related to facility closure;

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

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

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

The resulting relative weighted factor per facility for the various subclasses and the proposed FY 1999 annual fee for each are as follows:

	Number of facilities	Level of benefit		
		Category weight	Total weight	
			Value	Percent
Class I facilities .....	3	770	2310	31

	Number of facilities	Level of benefit		
		Category weight	Total weight	
			Value	Percent
Class II facilities .....	7	645	4515	61
11e(2) disposal .....	1	475	475	6
11e(2) disposal incidental to existing tailings sites .....	2	75	150	2

#### 4. Annual Fee Determination for Other Classes

##### a. Power Reactor Licensees

The approximately \$267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors would be divided equally among the 104 operating reactors. This results in a proposed FY 1999 annual fee of \$2,570,000 per reactor under Option A, or \$2,576,000 under Option B. In addition, each operating reactor would be assessed the proposed spent fuel storage/reactor decommissioning annual fee, which for FY 1999 is \$199,000 for each power reactor. This would result in a total FY 1999 annual fee of \$2,769,000 under Option A, or \$2,775,000 under Option B, for each operating power reactor.

##### b. Spent Fuel Storage/Reactor Decommissioning

For FY 1999, budgeted costs of approximately \$24.8 million are to be recovered through annual fees assessed to Part 50 power reactors and to Part 72 licensees who do not hold a Part 50 license. The costs would be divided equally among the 125 licensees, resulting in a proposed FY 1999 annual fee of \$199,000 for each licensee under both Option A and Option B.

##### c. Nonpower Reactors

Budgeted costs for FY 1999 of approximately \$343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a proposed FY 1999 annual fee of \$85,900 under Option A, or \$85,600 under Option B.

##### d. Rare Earth Facilities

The FY 1999 budgeted costs of approximately \$91,200 for rare earth facilities to be recovered through annual fees would be spread uniformly among the three licensees who have a specific license for receipt and processing of source material. This results in a proposed annual fee of \$30,400 under Option A, or \$30,500 under Option B for each rare earth facility.

##### e. Materials Users

To equitably and fairly allocate the \$30.5 million in FY 1999 budgeted costs

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

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

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

##### f. Transportation

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

under Option A or \$1,500 under Option B for holders of approved quality assurance plans for use only. The proposed FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use would be \$66,700 under Option A, or \$66,800 under Option B.

##### 5. Administrative Amendments

a. Section 171.13 would be amended to establish an annual fee for power reactors in a decommissioning or possession only status.

b. Section 171.15 would be revised to as follows:

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

(2) Paragraph (b) of § 171.15 would be revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status, and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references would be changed from FY 1998 to FY 1999. The activities comprising the base annual fees and the additional charge (surcharge) are listed in § 171.15(b) and (c) for convenience purposes.

Each operating power reactor would pay an FY 1999 annual fee of \$2,769,000 under Option A or \$2,775,000 under Option B, which includes the proposed annual fee of \$199,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status and each Part 72 licensee who does not hold a Part 50 license would pay the spent fuel storage/reactor decommissioning annual fee of \$199,000 under Option A or Option B in FY 1999.

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

(4) Paragraph (f) of § 171.15 would be revised to change fiscal year date references.

c. Section 171.16 would be amended as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section would be revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. The NRC would 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 would pay a maximum annual fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience.

(2) Section 171.16(d) would be revised to establish the FY 1999 annual fees for materials licensees, including Government agencies, licensed by the NRC. The amount or range of the proposed FY 1999 annual fees for materials licenses range from \$600 for a license authorizing the use of source material for shielding, to \$27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. Because of rounding, the fees for most materials licensees would be the same under Option A and Option B. The proposed annual fee for the "master" materials licenses of broad scope issued to Government agencies \$351,000 under Option A or Option B.

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

Holders of new licenses issued during FY 1999 would be subject to a prorated annual fee in accordance with the

current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY would be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, would not be assessed an annual fee for FY 1999. Thereafter, the full annual fee would be due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996 (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

d. Section 171.19 Payment, would be amended as follows:

(1) Section 171.19(b) would be revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year would be based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest would be waived if payment is received within 30 days from the invoice date.

(2) Section 171.19(c) would be revised to update fiscal year references.

As in FY 1998, the NRC would 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 would continue to be assessed quarterly). The annual fee assessed would be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than \$100,000 and the revised annual fee for the current fiscal year is \$100,000 or more. In this case, the revised amount would be billed to the licensees upon publication of the final rule in the **Federal Register**, adjusted for

any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 1999, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee 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 1999 before the effective date of the FY 1999 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule would be billed at the FY 1999 revised rates during the anniversary month of their license. Payment would be due on the date of the invoice.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC is proposing to:

1. Establish a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminate the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The proposed annual fee would be assessed to all Part 50 power reactor licensees, including those in decommissioning or possession only status, and to those Part 72 licensees who do not hold a Part 50 license;

2. Establish new baseline annual fees for FY 1999. Because the rebaselined fees would result in significant increases for some licensees, the NRC is seeking public comment on two potential methods for establishing the FY 1999 annual fees: (1) rebaseline the fees without a cap on fee increases, or (2) rebaseline the annual fees with a cap so that no licensees' annual fee increases more than 50 percent from FY 1998; and

3. Use revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

### III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language

in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the ADDRESSES heading.

#### IV. Environmental Impact: Categorical Exclusion

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

#### V. Paperwork Reduction Act Statement

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

#### VI. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of

the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

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

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1998 to extend the 100 percent fee recovery requirement for NRC through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed 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 1999 budget of \$469.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;
- (2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and
- (3) The annual fees be assessed to those licensees the Commission, in its

discretion, determines can fairly, equitably, and practicably contribute to their payment.

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

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

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

#### VII. Regulatory Flexibility Analysis

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

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1999. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 1999.

#### VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of

a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

#### List of Subjects

##### 10 CFR Part 170

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

##### 10 CFR Part 171

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

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

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

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

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

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

##### § 170.2 Scope.

\* \* \* \* \*

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

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

##### § 170.3 Definitions.

\* \* \* \* \*

*Inspection* means:

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

(2) Non-routine inspections in response or reaction to an incident, allegation, followup to inspection deficiencies or inspections to determine

implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection;

(3) Reviews and assessments of licensee performance;

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

(5) Incident investigations.

\* \* \* \* \*

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

\* \* \* \* \*

*Special projects* means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical reports reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

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

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

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

\* \* \* \* \*

4. Section 170.5 is revised to read as follows:

##### § 170.5 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001.

Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

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

##### § 170.11 Exemptions.

(a) \* \* \*

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

\* \* \* \* \*

6. Section 170.12 is revised to read as follows:

##### § 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or adding a new fee category prior to receiving the prescribed application fee. The application fee(s) is charged whether the Commission approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

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

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

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

(iii) Preapplication consultations and reviews; and

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

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

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed, except for costs that were deferred before August 9, 1991. The deferred costs will be billed as described in paragraphs (b)(5), (b)(6) and (b)(7) of this section. Each bill will identify the applications and documents submitted for review and the costs related to each.

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

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

(6) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

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

installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

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

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

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

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

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

(d) *Special project fees.* (1) Fees for special projects are based on the full cost of the review. Special projects includes activities such as—

(i) Topical reports;

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

(iii) Responses to Confirmatory Action Letters;

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

(v) 10 CFR 50.71 final safety analysis reports.

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

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

(f) *Method of payment.* All license fee payments are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer such as ACT (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card. Payment of invoices of \$5,000 or more should be paid via ACT through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the License Fee and Accounts Receivable Branch at 301-415-7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

7. Section 170.20 is revised to read as follows:

**§ 170.20 Average cost per professional staff-hour.**

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates: Reactor Program.  
(\$ 170.21 Activities) ..... \$141 per hour.

Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).

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

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

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses,

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

**SCHEDULE OF FACILITY FEES**

[See footnotes at end of table]

Facility categories and type of fees		Fees <sup>1 2</sup>				
*	*	*	*	*	*	*
K. Import and export licenses:						
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110:						
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):						
Application—new license .....						\$9,100.
Amendment .....						\$9,100.
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):						
Application—new license .....						\$5,600.
Amendment .....						\$5,600.
3. Application for export of components requiring foreign government assurances only:						
Application—new license .....						\$1,700.
Amendment .....						\$1,700.
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:						
Application—new license .....						\$1,100.
Amendment .....						\$1,100.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:						
Amendment						\$210.

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

<sup>2</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

\* \* \* \* \*

9. Section 170.31 is revised to read as follows:

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

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

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

**SCHEDULE OF MATERIALS FEES**

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2 3</sup>
1. Special nuclear material:	



## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only: Licensing and inspection .....	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI): Licensing and inspection .....	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: <sup>4</sup> Application .....	\$640.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: <sup>4</sup> Application .....	\$1,300
E. Licenses or certificates for construction and operation of a uranium enrichment facility. Licensing and inspection .....	Full Cost.
2. Source material: A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: Licensing and inspection .....	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1): Licensing and inspection .....	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1): Licensing and inspection .....	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding: Application .....	\$150.
C. All other source material licenses: Application .....	\$5,500.
3. Byproduct material: A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application .....	\$6,600.
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application .....	\$2,400.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D: Application .....	\$10,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4): Application .....	\$2,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units): Application .....	\$1,700.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes: Application .....	\$3,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes: Application .....	\$3,400.
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter: Application .....	\$2,000.
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter: Application .....	\$3,200.

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter: Application .....	\$1,000.
K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter: Application .....	\$600.
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution: Application .....	\$5,500.
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution: Application .....	\$2,300.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C: Application .....	\$2,300.
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations: Application .....	\$5,800.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D: Application .....	\$1,300.
4. Waste disposal and processing: A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material: Licensing and inspection .....	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: Application .....	\$1,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: Application .....	\$2,500.
5. Well logging: A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies: Application .....	\$6,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies: Licensing .....	Full Cost.
6. Nuclear laundries: A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material: Application .....	\$11,200.
7. Medical licenses: A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application .....	\$6,100.
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application .....	\$4,400.
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application .....	\$2,400.
8. Civil defense: A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities: Application .....	\$320.
9. Device, product, or sealed source safety evaluation: A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution: Application—each device .....	\$5,200.

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices: Application—each device .....	\$3,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution: Application—each source .....	\$1,580.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel: Application—each source .....	\$530.
10. Transportation of radioactive material: A. Evaluation of casks, packages, and shipping containers: Licensing and inspections .....	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs: Application .....	\$390.
Inspections .....	Full Cost.
11. Review of standardized spent fuel facilities: Licensing and inspection .....	Full Cost.
12. Special projects: <sup>5</sup> Approvals and preapplication/Licensing activities .....	Full Cost.
Inspections .....	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance: Licensing .....	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance .....	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter .....	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter: Licensing and inspection .....	Full Cost.
15. Import and Export licenses: Licenses issued under 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite: A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries: Application—new license .....	\$9,100.
Amendment .....	\$9,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country: Application—new license .....	\$5,600.
Amendment .....	\$5,600.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act: Application—new license .....	\$1,700.
Amendment .....	\$1,700.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures: Application—new license .....	\$1,100.
Amendment .....	\$1,100.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments: Amendment .....	\$210.
16. Reciprocity: Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20: Application (initial filing of Form 241) .....	\$1,200.
Revisions .....	\$200.

<sup>1</sup> *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

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

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

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

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment/revision fees.* Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

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

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

<sup>3</sup> Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

<sup>4</sup> Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

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

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

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

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

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

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

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

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

12. Section 171.13 is revised to read as follows:

**§ 171.13 Notice.**

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

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

13. Section § 171.15 is revised to read as follows:

**§ 171.15 Annual fees: Reactor licenses and spent fuel storage/reactor decommissioning.**

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under in § 171.11(a).

(b)(1) The FY 1999 annual fee for each operating power reactor would be the amount shown in Option A or Option B as presented in paragraphs (b)(1)(i) and (ii) of this section.

(i) Option A (Rebaselining without a cap): \$2,769,000.

(ii) Option B (Rebaselining with a 50 percent cap): \$2,775,000.

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

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

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

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

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license would be the amount shown in Option A or Option B as presented in paragraphs (c)(1)(i) and (ii) of this section.

(i) Option A (Rebaselining without a cap): \$199,000.

(ii) Option B (Rebaselining with a 50 percent cap): \$199,000.

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

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

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

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

(i) Low level waste disposal generic activities;

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

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

(2) The total FY 1999 surcharge allocated to operating power reactor

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

(3) The FY 1999 surcharge allocated to spent fuel storage/reactor decommissioning class of licensees is \$3.2 million. The FY 1999 spent fuel storage/reactor decommissioning surcharge to be added to each operating power reactor, each power reactor in decommissioning or possession only status, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$25,600. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licensees and Part 72 licensees who do not hold a Part 50 license (125).

(e) The FY 1999 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), would be the amount shown under Option A or Option B below:

	Option A (rebase- lining with- out a cap)	Option B (rebase- lining with a 50 percent cap)
Research reac- tor .....	\$85,900	\$85,600
Test reactor .....	85,900	85,600

14. Section 171.16 is revised to read as follows:

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

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

(i) 10 CFR part 30 for byproduct material;

(ii) 10 CFR part 40 for source material;

(iii) 10 CFR part 70 for special nuclear material;

(iv) 10 CFR part 71 for packaging and transportation of radioactive material; and

(v) 10 CFR part 76 for uranium enrichment.

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

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

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

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

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

	Maximum an- nual fee per cicensed cat- egory
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
\$350,000 to \$5 million .....	\$1,800
Less than \$350,000 .....	400

	Maximum annual fee per licensed category
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).

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under

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

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

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

(d) The FY 1999 annual fees, including the surcharge shown in paragraph (e) of this section, for materials licensees subject to fees under this section would be the amounts shown under Option A. or Option B. below:

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

[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 per- cent cap)
1. Special nuclear material:		
A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities:		
(a) Strategic Special Nuclear Material:		
Babcock & Wilcox SNM-42 .....	\$3,281,000	\$3,288,000
Nuclear Fuel Services SNM-124 .....	3,281,000	3,288,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:		
Combustion Engineering (Hematite) SNM-33 .....	1,100,000	1,103,000
General Electric Company SNM-1097 .....	1,100,000	1,103,000
Siemens Nuclear Power SNM-1227 .....	1,100,000	1,103,000
Westinghouse Electric Company SNM-1107 .....	1,100,000	1,103,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities:		
(a) Facilities with limited operations:		
Framatome Cogema SNM-1168 .....	432,000	433,000
(b) All Others:		
General Electric SNM-960 .....	314,000	315,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). See 10 CFR part 171.15(c).		
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers .....	1,200	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) .....	3,300	3,400
E. Licenses or certificates for the operation of a uranium enrichment facility .....	2,043,000	2,048,000
2. Source material:		
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride .....	472,000	473,000
(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 facilities <sup>4</sup> .....	131,000	92,100
Class II facilities <sup>4</sup> .....	109,000	52,100
Other facilities <sup>4</sup> .....	30,400	30,500

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

[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 per- cent cap)
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) .....	81,000	67,600
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) .....	13,000	11,900
B. Licenses that authorize only the possession, use and/or installation of source material for shielding .....	600	620
C. All other source material licenses .....	11,700	11,700
3. Byproduct material:		
A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution .....	26,000	24,800
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution .....	6,300	6,300
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D .....	15,300	15,400
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license .....	3,800	3,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) .....	3,400	3,400
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes .....	5,700	5,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes .....	14,800	14,800
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter .....	3,200	3,200
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter .....	4,600	4,600
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of terms that have been authorized for distribution to persons generally licensed under Part 31 of this chapter .....	2,100	2,100
K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter .....	1,700	1,700
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution .....	11,200	11,200
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution .....	5,000	5,000
N. Licenses that authorize services for other licensees, except:		
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and		
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C .....	5,200	5,200

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

[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 per- cent cap)
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license .....	14,700	14,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D .....	2,600	2,500
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 .....	<sup>5</sup> N/A	.....
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material .....	11,300	11,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material .....	8,400	8,400
5. Well logging:		
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies .....	9,900	10,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies .....	<sup>5</sup> N/A	
6. Nuclear laundries:		
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material .....	18,900	19,000
7. Medical licenses:		
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license .....	15,300	15,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. <sup>9</sup> .....	27,800	27,800
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. <sup>9</sup> .....	5,800	5,800
8. Civil defense:		
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities .....	1,200	1,200
9. Device, product, or sealed source safety evaluation:		
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution .....	6,000	6,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices .....	4,300	4,300
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.. ..	1,800	1,800
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel .....	600	620
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 .....	<sup>6</sup> N/A	.....
Other Casks .....	<sup>6</sup> N/A	.....
B. Quality assurance program approvals issued under 10 CFR part 71:		
Users and Fabricators .....	66,700	66,800
Users .....	2,200	1,500
11. Standardized spent fuel facilities .....	<sup>6</sup> N/A	.....
12. Special Projects .....	<sup>6</sup> N/A	.....
13. A. Spent fuel storage cask Certificate of Compliance .....	<sup>6</sup> N/A	.....



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

[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>	
	Option A (rebaselining without a cap)	Option B (rebaselining with a 50 per- cent cap)
B. General licenses for storage of spent fuel under 10 CFR 72.210	* N/A	.....
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR parts 30, 40, 70, 72, and 76 of this chapter .....	<sup>7</sup> N/A	.....
15. Import and Export licenses .....	<sup>8</sup> N/A	.....
16. Reciprocity .....	<sup>8</sup> N/A	.....
17. Master materials licenses of broad scope issued to Government agencies	358,000	359,000
18. Department of Energy:		
A. Certificates of Compliance .....	872,000	873,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities .....	869,000	870,000

\* See 10 CFR 171.15(c).

<sup>1</sup> Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a 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 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

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

<sup>3</sup> Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

<sup>4</sup> 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.

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

<sup>6</sup> 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.

<sup>7</sup> 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.

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

<sup>9</sup> 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.

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

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

(1) LLW disposal generic activities;

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

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

15. Section 171.19 is revised to read as follows:

**§ 171.19 Payment.**

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of \$5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with

Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

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

of the final rule for the full amount of the FY 1999 annual fee, less any payments received for FY 1999 based on the anniversary date billing process.

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

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

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

Dated at Rockville, Maryland, this 25th day of March, 1999.

For the Nuclear Regulatory Commission.  
**Peter J. Rabideau,**  
*Acting Chief Financial Officer.*

**Note:** This appendix will not appear in the Code of Federal Regulations.

**Appendix A to this Proposed Rule—Draft 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 (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-

based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

The Omnibus Budget Reconciliation Act (OBRA-90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 1999 is approximately \$449.6 million.

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

Since FY 1996, the NRC stabilized annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority. 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. The NRC indicated that if there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated. Because the NRC is proposing to establish a new annual fee class for FY 1999 and based on program changes that have occurred, the NRC is proposing to establish new baseline annual fees this fiscal year. This rebaselining would result in significant annual fee increases for certain classes of licensees. Therefore, the NRC is presenting for public comment two potential annual fee schedules, Option A-rebaselining without a cap, and Option B-rebaselining with a 50 percent cap. The NRC recognizes that under either option the rebaselined annual fees would result in an increase in the annual fees charged to some categories of materials licensees.

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

entity compliance guide (Attachment 1) have been prepared for the FY 1999 fee rule as required by law.

**II. Impact on Small Entities**

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

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

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

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

3. Some companies would go out of business.

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

Since annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these

terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

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

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

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

The NRC established, and intends to continue for FY 1999, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1999, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

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

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, would pay for most of the FY 1999 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore,

the NRC is proposing to continue, for FY 1999, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of \$1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in each year since 1992, the NRC is continuing the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of \$400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. Therefore, even though the proposed rebaselined annual fees would increase the annual fees charged to several categories of materials licensees, licensees who qualify as small entities would not be adversely affected.

### III. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions established in previous fee rules remain valid for FY 1999.

### Attachment 1 to Appendix A

*U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1999*

#### Contents

Introduction  
NRC Definition of Small Entity  
NRC Small Entity Fees  
Instructions for Completing NRC Form

#### 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) requires the NRC to collect approximately 100 percent of its budget authority each year through fees. This rule is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees comply with the FY 1999 fee rule.

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

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

### NRC Definition of Small Entity

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

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees;<sup>2</sup>

### NRC Small Entity Fees

In 10 CFR 171.16(c), the NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

<sup>2</sup> 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.

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
\$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

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

#### Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from

licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

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

maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$900 or \$200 for each fee category billed instead of the full small entity annual fee of \$1,800 or \$400.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. **LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT.** The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

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

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

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