

OGC Comments  
5/23

5/22/00 Final Fee Rule [7590-01-P]

NUCLEAR REGULATORY COMMISSION  
10 CFR Parts 170 and 171  
RIN: 3150-AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 2000, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2000 is approximately \$447.0 million.

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

**ADDRESSES:** Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555. Comments received may also be viewed via the NRC's interactive rulemaking website <http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For

Classification (SIC) System establishes size standards based on types of economic activity or industry. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry.

## II. Response to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to <sup>S</sup>licensees and applicants for FY 2000 on March 27, 2000 (65 FR 16250). A total of 13 comments were received on the proposed rule. Many of the comments were similar in nature. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

### A. Legal Issues.

#### 1. NRC's Interpretations of OBRA-90 and IOAA

Comment. Several commenters again raised questions about the NRC's legal interpretations of OBRA-90 and the IOAA. For example, some commenters argued that OBRA-90 prohibits exemptions from Part 170 fees, and that accordingly the NRC must charge federal agencies, state agencies, and state licensees fees under Part 170 for specific services rendered.

Comment. One commenter complained that, in deriving the FY 2000 annual fees by simply escalating last year's fee by 1.4 percent, the NRC has not given "any consideration" to whether underlying costs have any rational connection to reactor regulation or any consideration of whether the total assessment is as fair and equitable as is feasible. The commenter also claims that the proposed rule fails to provide "any explanation and accounting of the expenses that are covered by this charge," and thus "denies the companies a meaningful opportunity to comment."

Another commenter indicated that, under the provisions of the Administrative Procedures Act, *has not provided sufficient information to evaluate costs. For instance, it* the NRC should provide detailed cost information associated with each component of reactor regulation and other generic costs. The commenter believes this would provide for more effective feedback and comment and would promote increased Commission efficiency because the costs of services and other agency expenses, such as overhead, would be more visible to stakeholders. The commenter also requested that NRC provide a more detailed account of major research contracts, their purpose, and their costs.

Response. The NRC believes there is nothing obscure about the 1.4 percent increase in annual fees or its relation to reactor regulation. The FY 2000 proposed rule clearly describes the calculation that leads to the 1.4 percent increase (65 FR 16251, 16253-4). This calculation is also repeated in this final rule. In addition, the proposed rule announced the availability of the agency's work papers that support these calculations. Furthermore, the NRC has made available in the Public Document Room NUREG-1100, Volume-15, "Budget Estimates and Performance Plan, Fiscal Year 2000 (February 1999)." This document discusses the NRC's

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However, this increase is in nominal dollars only. Inflation ran 2.4% over FY 1999, but the annual fees are increasing only 1.4% in nominal dollars. Thus, in real terms, annual fees for FY2000 are 1% lower than annual fees for FY1999.



budget for FY 2000 in detail, including the activities to be performed in each strategic arena.

Reactor-related research activities are described under the Nuclear Reactor Safety arena.

*These explanations satisfy all legal requirements and afford commenters ample information upon which to base their comments*

The fact that the NRC decided to derive the FY 2000 annual fees by means of a percentage increase in no way indicates that the fee was derived without regard to the costs of reactor regulation. To the contrary, the very decision to proceed by percentage increase is based on a consideration of, among other things, whether there has been a substantial change in the magnitude of the budget allocated to a specific class of licensees. The percent change method exists not so the agency can avoid the effort of making the best possible match between fees and services, but rather to give licensees some cost stability. Last year the NRC solicited comment on whether it should retain the percent change method or rebase annual fees every year (63 FR 15884; April 1, 1999). The majority of commenters favored continued use of the percent change method because they desired some stability in fees. The Commission has retained this method, with the additional provision that fees will be rebaselined at least every three years.

The total budgeted amount to be recovered in FY 2000 through fees charged to NRC applicants and licensees actually decreased by approximately \$2.6 million from the FY 1999 level. The slight increase in annual fees is therefore a result of the absence of a carryover from prior years, a decrease in estimated payments for prior year invoices, and a reduction in the number of licensees. *insert*

The NRC emphasizes that, considering inflation, the NRC's budget, in real terms, is down once again -- to an all-time low. It represents a 25 percent decrease in the last 7 years alone and

staffing levels are their lowest in 20 years. This has all been achieved while the NRC has expended large resources in extraordinary reform efforts, particularly in enforcement and power reactor oversight.

B. Specific Part 170 Issues.

1. Project Manager Billings Issues.

Comment. Uranium recovery industry commenters strongly opposed the NRC's current billing method for Project Managers (PMs). Many <sup>of these</sup> comments were directed towards the unfairness of certain types of PM activities being charged to licensees that had little or no <sup>such as work on Combined Federal Campaign or work for other offices.</sup> apparent connection to the sites the PMs were managing. One commenter stated that indirect PM charges should be captured under Part 171 annual fees versus Part 170 fees due to the inequities of the NRC's current billing system, thereby allowing indirect PM charges to be evenly distributed to all uranium recovery licensees paying annual fees. Another concern was the unequal distribution of PMs to licensee sites, thereby subjecting certain licensees to a disproportionate share of indirect (e.g., administrative) PM costs.

Response. In FYs 1998 and 1999, the NRC shifted cost recovery for certain activities from Part 171 annual fees to Part 170 fees. As part of this effort, in FY 1999 the NRC made a conscientious decision to recover the full costs for PMs, with the exception of PM activities that are generic in nature (e.g., rulemaking and preparation of generic guidance documents, etc.) and leave time, through Part 170 fees. This decision is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and previous Commission guidance. In

summary, 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. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

With the exception of generic activities and leave time, PM activities are services which the NRC provides to specific, identifiable beneficiaries (i.e, the site or sites to which the PM is assigned). Thus, as the NRC stated in the FY 1999 final rule, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in a particular class (64 FR 31448; June 10, 1999). This ~~change~~ results in licensees who have ceased operations being charged for the full costs of PMs assigned to their sites. If indirect PM costs were included in the Part 171 annual fee, then only operating licensees, licensees in standby, and power reactor licensees who are in decommissioning or possession only status and having fuel on-site would pay these PM costs. ✓

As indicated in the final FY 1999 fee rule, the NRC readily acknowledges that certain PM activities are not directly related to a specific licensing action or inspection, or even to a specific site. However, these activities are part of the costs to the agency of providing the PM services, and these costs are most appropriately recovered from the licensee benefitting from those services. Examples of these activities were provided in the FY 1999 final rule. ~~However, that list of examples was not intended to be all-inclusive.~~ <sup>summary</sup> ✓

through Part 170 fees include the general management and oversight of the particular site or sites to which they are assigned, and general activities such as training, travel, general correspondence, staff meetings, coordination with and support to other offices, and processing documents into the NRC's Agencywide Document Access and Management System (ADAMS). A review of the PM time reported in the first two quarters of FY 2000 indicates that approximately 10-15 percent of a PM's time is spent on general or non-site specific administrative duties. The NRC believes it is appropriate to recover the costs for this small percentage of the PM's time from the assigned site or sites as a necessary function in support of the NRC's overall mission.

The NRC stated in the FY 1999 final rule that leave time would be excluded from PM time billed under Part 170. For purposes of Part 170 fees for PMs and resident inspectors, leave time includes approved leave, excused absences, and absences in a duty status. After further review, the NRC has determined that Combined Federal Campaign activities are most appropriately identified as an excused absence for fee billing purposes, and thereby excluded from Part 170 fee assessments. Accordingly, NRC is adjusting those Part 170 invoices that included these

~~leave~~ charges. *Schneiders*

The NRC understands some commenters' concerns about the unequal distribution of licensee sites among PMs in the NRC's uranium recovery program. In the case of PMs assigned to more than one license or site, the PM time that is not directly related to a specific site or to generic activities is prorated to each of the assigned licenses or sites. ~~The NRC~~

~~contends that~~ a site having a fully dedicated PM should bear more of the PM's general and administrative costs, and therefore the ~~unequal~~ distribution of these costs between the licensees *reflects the proportion of time devoted to one or more sites,* in the fee class ~~is not inappropriate.~~ As previously noted, this time is a small percentage of the total PM's time.

The NRC is revising the professional hourly rates to \$143 for the nuclear materials and nuclear waste program and \$144 for the reactor program. As required by OBRA-90, the NRC must recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, through either fees for direct services (Part 170) or annual fees (Part 171). The professional hourly rates, which are based on budgeted costs, must be established at these levels to meet the fee recovery requirement.

The revised professional hourly rates of \$143 and \$144 mark a \$3 per hour increase over FY 1999. This is primarily attributable to the Government-wide pay increase which went into effect January 2000. This equates to approximately a 2.1 percent increase over the previous year for professional hourly rates, while at the same time inflation, as measured by the Consumer Price Index, was approximately 2.4 percent. *Again, as with the annual fee "increase," it actually represents a slight decrease in real dollars.*

With regard to the OIG's findings and recommendations, the Commission continues to assert that its fee schedules are in full compliance with the requirements of OBRA-90, IOAA, and OMB Circular A-25. ~~Further,~~ the NRC's methodology for calculating the IOAA fees was upheld by the Court in Mississippi Power & Light v. NRC [601 F. 2d 223 (5<sup>th</sup> Cir. 1979) cert. denied 444 U.S. 1102 (1980)]. ~~[An internal NRC review of the contract costs excluded from the hourly rate~~

~~concluded that there is no basis to include these costs in the hourly rates as suggested by the OIG.]~~ *Further, a comprehensive response was published*

*with the OIG report concerning the NRC fee development process, which may be accessed via the NRC's website. Interested individuals may review the response in detail there. [at http: \_\_\_\_\_ ]?*

3. Invoice Information.

implemented a revised policy requiring that future annual fees be rebaselined every three years, or earlier if warranted. The Commission's decision on the appropriate method for establishing annual fees (i.e., rebaselining vs percentage change) is made each year after considering the criteria for rebaselining and all relevant facts.

2. Small Entity Fee Increase.

Comment. Several comments were received on the proposed 25 percent increase in the small entity annual fees. Some commenters indicated that a 25 percent increase would have negative economic impacts on their businesses. These commenters said it would be difficult for them to recover the increase, and it could force some small companies to give up their licenses. One commenter <sup>attributed the</sup> ~~stated that the~~ NRC's reason for the increase <sup>to</sup> ~~was~~ the decrease in the number of licensees. This commenter said that businesses faced with reduced sales would not be able to increase prices, but rather would be forced to reduce their budgets, and that this would be an obvious solution for the NRC to follow. Two commenters noted that while the annual fee assessed to small entities would increase by 25 percent, the annual fee for certain other licensees, such as gauge users, would not increase.

Several commenters suggested alternatives to the current basis for the small entity annual fee. One commenter suggested that the fee be based on net receipts or receipts from regulated activities. Another recommended that the small entity fee be based on the number of gauges owned or leased. This commenter indicated that there are increased licensing and inspection costs associated with larger numbers of gauges and there would be

no additional expense for licensees to provide this information because they already maintain a gauge inventory. A third commenter requested that small entity size standards be established for reactor licensees based on the utility's total capacity, number of employees, customers in the rate base, or a combination of these factors.

Some commenters requested that the NRC establish more tiers or levels of fees, indicating that the spread between the current tiers is too great. One commenter said one company should not be burdened with the same fee as a company with fourteen times the gross receipts. Another commenter said the current lower tier of \$350,000 in annual gross receipts should be increased to \$1 million to reflect FY 2000 equivalent dollars.

Response. The NRC is increasing the small entity annual fee and the lower tier small entity fee by 25 percent in this final rule. While NRC recognizes the effect this increase may have on some small entities, the NRC believes this action strikes a balance between the requirement of OBRA-90 to collect approximately 100 percent of the NRC's budget authority through fees, and the Regulatory Flexibility Act (RFA) requirement to consider the impact of agency actions on small entities.

The NRC has determined that assessing costs to the materials class of licensees which are attributable to that class, as indicated in the Conference report accompanying OBRA-90, results in a significant impact on a substantial number of small entities. However, the NRC is not required to reduce or eliminate the impact on small businesses, but must <sup>to</sup> evaluate the impact and explain its decisions. The NRC has developed the Regulatory Flexibility Analysis for this final rule (see Appendix A to this document). Given the conflicting

the 25 percent increase in the small entity annual fee results from changes that have occurred in the types of costs recovered through annual fees and increases to costs since the \$1,800 small entity fee was established. When the \$1,800 maximum small entity annual fee was established in FY 1991, small entities also paid fees for inspections, amendments, and license renewals, resulting in an average of \$3,400 in fees paid by small entities per year. However, since 1991 the inspection, amendment, and renewal fees have been eliminated from Part 170 charges and have been incorporated in the annual fees assessed to the materials class of licensees. As a result of these and other changes, the average total fees paid per year by other materials licensees increased by approximately 25 percent, from \$6,700 in FY 1991 to \$8,400 in FY 1999. For the same period, the average total fees paid per year by small entities decreased approximately 47 percent, from \$3,400 in FY 1991 to \$1,800 in FY 1999.

The NRC's size standards, which are codified in 10 CFR 2.810, are outside the scope of this rulemaking. Therefore, commenters' suggestions that the size standards be revised are not being addressed in this final rule. The NRC's receipts-based size standard for small businesses not engaged in manufacturing is based on the most commonly used Small Business Administration (SBA) size standard of \$5.0 million in annual gross receipts for these types of businesses. Gross receipts include revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived.

resulted in an offsetting decrease in Part 171 fees, thereby exacerbating an already unfair and inequitable situation.

*It is incorrect to assume that*

Response. *have increased* The NRC takes issue with the commenters' specific concern about ~~increasing 170 fees with no corresponding drop in Part 171 fees.~~ As required by OBRA-90, the Part 171 annual fee recovery amounts are offset by the estimated Part 170 fee collections. The estimated collections for FY 2000 include a \$2.4 million increase in estimated Part 170 fees, from \$103.5 million in FY 1999 to \$105.9 million for FY 2000. This increase is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for PMs, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval. However, this increase is offset by other factors, as described in the proposed fee rule (65 FR 16253, 16254; March 27, 2000). To reiterate, as the NRC explained in the FY 1999 proposed and final fee rules (64 FR 15876; April 1, 1999; and 64 FR 31458; June 10, 1999), a \$4.1 million carryover from additional FY 1998 collections was applied to FY 1999 collections, thereby reducing the total fee recovery amount for FY 1999. However, this carryover does not exist for FY 2000. The \$1.7 million decrease in estimated total collections for FY 2000 is the difference between the \$4.1 million carryover from additional 1998 collections and the estimated \$2.4 million increase in Part 170 collections for FY 2000 as compared to FY 1999. In addition, the FY 2000 net annual fee billing adjustment, which is for invoices that will not be paid in FY 2000, the small entity subsidy, and payments received in FY 2000 for FY 1999 invoices, is approximately \$5.7 million, compared to the FY 1999 adjustment of \$3.2 million. As a result of these changes, which are summarized in Table II of this final rule, the total Part 171 billing amount increased from

\$345.1 million in FY 1999 to \$346.7 million in FY 2000. In addition, there are approximately 530 fewer licensees available to pay the annual fees in FY 2000, primarily because Ohio became an Agreement State in August, 1999.

4. Impacts of the Revised Annual Fees on Licensees

Comment. Several commenters stated that the NRC's FY 1999 rebaselining placed a significant financial burden on the uranium recovery industry due to increased fees and that uranium recovery licensees bore a disproportionate share of the cost burden from this process. Many uranium recovery commenters asserted the uranium market is depressed and at a historical low. These commenters claimed that the NRC's current fee structure is excessive and unfair to the uranium recovery industry class of licensee. Furthermore, they indicated that licensees do not have the capability of passing through these additional costs to the consumer, thereby adversely affecting the viability of some companies. A reactor licensee who referred to the challenge of the competitive, unregulated marketplace for utilities, commented that the cost of regulating the industry is passed on to the consumer. This commenter indicated that businesses do not locate in the company's area, or end up leaving the area, because the electric rates there are among the highest in the State.

Response. The NRC acknowledges the commenters' concern about the depressed state of the uranium industry and that any increase in fees to uranium recovery licensees poses a significant financial hardship. However, without legislative relief, the NRC is mandated by OBRA-90 to collect approximately 100 percent of its

The NRC's fee-based budget for FY 2000 did, in fact, decrease by \$2.6 million from FY 1999, as shown in Table II of the proposed rule and this final rule. However, the need for generic efforts and other activities of the agency may not necessarily decrease at the same rate as the decrease in the number of licensees. For example, the NRC's cost to establish a risk-informed, performance-based regulatory framework is not affected by a decrease in the number of licensees. Similarly, the costs to maintain the Emergency Response Center are not affected by the number of licensees. The NRC continually evaluates options to reduce costs without sacrificing its health and safety mission, including costs in those areas where the licensee base is diminishing.

In the years that annual fees have been based on the percent change method (FYs 1996, 1997, 1998, and 2000), there have been decreases in both materials licenses and reactor licenses. For example, in FY 1998, the equivalent of 2.3 fewer reactor licensees were available to pay the annual fees compared to FY 1997. This represented a reduction of approximately 20 percent of the total operating reactors. In FY 2000, there are approximately 530 fewer materials licensees compared to FY 1999, a reduction of approximately 10 percent.

Under the percent change method, which has been endorsed by most of those commenting on the methodology since it was introduced in FY 1995, the number of licensees is only one factor in the determination of the percentage change to the annual fees needed to assure 100 percent fee recovery. This does not mean that the percentage change to the previous year's annual fees is related to a change in the costs of regulating the class of licensees that experienced the decrease in licensees. Rather,

licensee is the authority to use licensed material. The choice of whether or not to exercise that authority is a business decision of the licensee.

Because of the mandate that the NRC recover approximately 100 percent of its budget through fees, to refrain from charging annual fees to licensees in a standby mode would increase the annual fees for other licensees in the class because the number of licensees assessed annual fees would decrease. Such an approach would raise fairness and equity concerns. However, licensees who voluntarily relinquish the authority to operate and have ceased operations will have their annual fee waived by the NRC, including sites with reclamation or decommissioning plans pending NRC review. Thus, the commenter's remark about the NRC assessing annual fees to uranium recovery sites in decommissioning is incorrect.

*more*  
Licensees in standby status receive benefit from NRC's generic guidance and rules applicable to their class of licensee. Additionally, any reduction in required licensing reviews and inspections for licensees in a standby mode would be reflected in reduced Part 170 fees assessed to them.

#### 8. Relationship Between Benefits and Fees.

Comment. Several uranium recovery commenters found a lack of relationship between NRC's regulatory program and the benefits derived by industry, such as a disparity in Part 171 fees versus Part 170 fees and excessive levels of oversight/inspections for

operating licensees for what amounts to a relatively benign industry from a health and safety standpoint.

Response. In the FYs 1998 and 1999, the NRC considered ways to recover more of its costs through Part 170 fees. The Commission decided in FY 1999, for example, to expand the scope of Part 170 fees to include incident investigations, certain performance assessments and evaluations, reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by PMs (except time spent on generic activities such as rulemaking, and leave). The NRC believes that the costs for the activities not recovered through Part 170 fees are appropriately included in the Part 171 annual fees. These activities include generic efforts, activities exempted from Part 170 fee recovery based on NRC policy or legal constraints, and <sup>certain</sup> activities that raise fairness and equity concerns because they do not benefit the licensees who pay the costs. In the FY 1999 final fee rule, the NRC outlined the actions it has taken to address the fairness and equity concerns (64 FR 31448-50). The response to comments on the FY 2000 proposed fee rule concerning legal issues (A. 1. of this Section) provides an update to the FY 1999 discussion.

The NRC takes issue with the commenters' remark about the uranium recovery industry being subjected to excessive regulatory oversight by the NRC for a relatively low risk operation. The NRC is charged with the responsibility of regulating the nation's civilian radioactive source material supply in a manner that is safe to public health and the environment. Uranium recovery is one of the activities that the NRC regulates under its mandate. The commenters' suggestion that uranium recovery presents a relatively low health and safety risk does not obviate the NRC's responsibility to regulate the industry, nor

These programmatic efficiencies are intended to reduce the amount of resources expended on licensing and inspection activities. However, there are other activities that have required increased resources. For example, three uranium recovery licensees were involved in Atomic Safety Licensing Board administrative hearings over the last several years. These contested hearings have consumed substantial NRC staff resources. The budgeted resources devoted to contested hearings affect the Part 171 fee base because, for policy and legal reasons, the Commission does not charge Part 170 fees for contested hearings. Commenters, including those in the uranium recovery industry, have opposed cost recovery under Part 170 for contested hearings.

Comment. Many commenters voiced their displeasure with the inequities of OBRA-90 and encouraged the NRC to continue its efforts in pursuing legislative action to obtain fee relief for the uranium recovery industry.

Response. The FY 1999 fee rule outlines the actions the NRC has ~~is~~ taken to address the inequities of the annual fees. As noted previously, the NRC supports legislation that would reduce the NRC's fee recovery amount in order to address the fairness and equity concerns. The Senate has passed such legislation.

D. Other Issues.

1. NRC'S Budget.

that NRC charges to its materials licensees changed during the period between 1991 and 1999. In the past, costs for materials license inspections, renewals, and amendments were recovered through Part 170 fees for services. The costs of these activities are now included in the Part 171 annual fees assessed to materials licensees.

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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 2000.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives

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.

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5. Section 170.31 is revised to read as follows:

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

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

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

Category of materials licenses and type of fees<sup>1</sup>

Fee<sup>2,3</sup>

1. Special nuclear material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained

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