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



January 27, 2005

MEMORANDUM TO: Tammy Croote  
Office of the Chief Financial Officer  
FROM: *Michael T. Lesar*  
Michael T. Lesar, Chief  
Rules and Directives Branch  
Division of Administrative Services  
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON PROPOSED RULE REVISING 10 CFR PARTS 170 AND 171 - REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2005 (RIN AH61)

The Office of Administration (ADM) concurs in the subject rulemaking, with the exceptions noted in the attached mark-up of the package.

When forwarding the rule for publication in the *Federal Register*, please have your staff note the following publication requirements.

- The package must include all items listed in the attached **ADM Publication Package Checklist** ✓
- All documents transmitted must be placed in **ADAMS** before the package is sent to ADM. See the Publication Package Checklist for instructions on profiling the rule and Congressional letters in ADAMS.
- The attached **ADAMS Public Availability Checklist** must be completed and returned with the final publication package.
- After publication of the *Federal Register* notice, a **Regulatory History** for this rule must be created in ADAMS. To facilitate generation of the regulatory history using the ADAMS report function, enter the Regulation Identifier Number (RIN) for the rule (RIN 3150-AH61) as the Case/Reference Number in the ADAMS profile of each document related to the rulemaking.

If you have any questions about this matter, please contact me at 415-7163 (MTL), or Betty Golden (bkg2) at 415-6863.

Attachments:

1. Mark-up of rulemaking package
2. ADM Publication Package checklist
3. ADAMS Public Availability checklist

*Comments incorporated*

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2005 budget authority less the appropriations received from the NWF. The NRC's total budget authority for FY 2005 is \$669.3 million, of which approximately \$68.5 million has been appropriated from the NWF. Based on the 90 percent fee recovery requirement, the NRC must recover approximately \$540.7 million in FY 2005 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2005 is \$4.6 million less than the amount estimated for recovery in FY 2004.

The FY 2005 fee recovery amount is reduced by a \$2.2 million carryover from additional collections in FY 2004 that were unanticipated at the time the final FY 2004 fee rule was published. This leaves approximately \$538.5 million to be recovered in FY 2005 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$163.1 million will be recovered in FY 2005 from part 170 fees and other offsetting receipts. The NRC derived this estimate based on the previous four quarters of billing data for each license class, with adjustments to account for changes in the NRC's FY 2005 budget. For FY 2005, the NRC also estimates a net adjustment of approximately \$0.5 million for FY 2005 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2005 for FY 2004 invoices. The remaining \$374.9 million would be recovered through the part 171 annual fees, compared to \$389.9 million for FY 2004.

The primary reason for the decrease in total fees for FY 2005 is that the NRC's fee recovery is 90 percent in FY 2005, compared to 92 percent in FY 2004. In accordance with the

FY 2001 Energy and Water Development Appropriations Act, This decrease in the NRC's required fee recovery is sufficient to offset the increase of 1.5 percent in the NRC's non-NWF budget in FY 2005.

Table I summarizes the budget and fee recovery amounts for FY 2005.

TABLE I. - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2005

[Dollars in millions]

Total Budget Authority .....	\$669.3
Less NWF .....	<u>-68.5</u>
Balance .....	\$600.8
Fee Recovery Rate for FY 2005 .....	<u>x 90.0%</u>
Total Amount to be Recovered For FY 2005 .....	\$540.7
Less Carryover from FY 2004 .....	<u>-2.2</u>
Less Part 171 Billing Adjustments	
Unpaid FY 2005 Invoices (estimated) .....	2.7 →
Less Payments Received in FY 2005 for Prior Year Invoices (estimated) .....	<u>-3.2</u> →
Subtotal .....	<u>-0.5</u>
Amount to be Recovered Through Parts 170 and 171 Fees .....	\$538.0
Less Estimated Part 170 Fees .....	<u>-163.1</u>
Part 171 Fee Collections Required .....	\$374.9

The FY 2005 final fee rule will be a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2005

which showed that NRC direct employees spend, on average, 1,446 hours per year on activities directly associated with the programmatic mission of the NRC. The NRC believes that the use of 1,446 hours per FTE is more appropriate for the purpose of the NRC's fee calculation than other estimates of hours per FTE used for different agency financial purposes. By using an estimate of hours per FTE that reflects direct staff time, only, the resulting hourly rates more accurately reflect the full cost of providing services under part 170. For this reason, the NRC believes that this revised estimate of hours per FTE is consistent with guidance provided in OMB Circular A-25 on recovering the full cost of services provided to identifiable recipients. This change also supports industry comments that consistently recommend that the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees. Finally, the NRC notes that it uses data on direct programmatic time per FTE (currently, 1,446 on average) for budgeting purposes; thus, use of 1,446 hours per FTE in the NRC's hourly rate calculation enhances consistency between fee calculation and budget planning assumptions.

Higher hourly rates would result in (1) increased full cost fees for licensing and inspection activities, and (2) increased materials flat fees for license applications. As noted, total part 171 annual fees would decrease by the same amount as the increase in total part 170 fees. This shift from part 171 to part 170 would be greater for those fee classes with a higher proportion of part 170 to part 171 work activities (e.g., operating power reactors, uranium recovery, rare earth). The total estimated fees (parts 170 + 171) recovered from a license fee class are the same regardless of the amount of the hourly rate, because annual fees are adjusted to recover the remainder of the budgeted resources for that class not recovered under part 170. However, when implemented, higher hourly rates would result in some individual licensees paying less total fees than if this change were not enacted. This would be true for those licensees for whom the NRC performs fewer hours of part 170 services than it does, on average, for a licensee in

orders because in cases where the order proposes the imposition of a civil penalty or other civil sanctions, the assessment of additional costs could be viewed as augmenting the amount of the civil penalty and could discourage licensees from contesting proposed enforcement actions. However, in recent years, the NRC's use of orders to impose additional requirements for safety or security reasons has increased. For example, subsequent to the September 11, 2001, terrorist attacks, the Commission imposed security requirements on various groups of licensees through orders. These orders resulted in the NRC's review of licensee-specific amendments and other activities that normally would have been billable under part 170, except that they were associated with orders.

Given the changing regulatory environment and the extent of licensee-specific activities that are resulting from orders unrelated to civil penalties or other civil sanctions, the NRC is proposing that its regulations be revised to allow for full cost recovery of these activities under part 170 from NRC licensees. The NRC is not proposing to change cost recovery for the development of these orders; these costs would continue to be recovered under part 171.

#### 4. Charging Fees for Unlicensed Sites in Decommissioning

The NRC currently does not charge part 170 fees to owners or operators of unlicensed sites in decommissioning. However, the NRC does perform work related to the decommissioning of these sites that could be recoverable under IOAA through part 170 fees because this work is associated with an identifiable beneficiary. These costs are currently recovered through either a surcharge that is included in NRC licensees' annual fees or through taxpayer-funded appropriations (i.e., Department of Treasury's General Fund). Recovering the site-specific decommissioning costs associated with these unlicensed sites through part 170

fees is consistent with the full cost recovery provisions of IOAA and the OMB's guidance in Circular A-25, "User Charges," and the NRC believes this change would enhance the fairness and equity of its fee schedule. Therefore, the NRC is proposing to add a new category (14B) to 'Schedule of Materials Fees' at §170.31 that would provide for the assessment of part 170 fees to recover the full cost of site-specific decommissioning activities for unlicensed sites. (The current Category 14 at §170.31 would be renumbered as Category 14A.) Section 170.2 would also be revised to expand the scope of part 170 to cover an owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

#### 5. Fee Waivers

Under §170.11(a)(1)(iii), part 170 fees are not required for a report/request that has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations. The NRC proposes to clarify this section by stating that this fee exemption applies only when it is requested from, and granted by, the Chief Financial Officer (CFO) in writing. While this is consistent with current practice in requesting and granting these fee waivers, the NRC believes this revision would enhance clear communication about implementation of this fee waiver provision.

#### 6. Full Cost Recovery of Project Manager Time

The FY 1999 final fee rule (64 FR 31448; June 10, 1999) expanded the scope of part 170 fee assessments to include full cost recovery for project managers assigned to a specific plant or facility. Under this policy at §170.12(b)(iv), most project managers' time, excluding leave and time spent on generic activities such as rulemaking, is recovered through part 170 fees

1. Establish revised materials and reactor programs FTE hourly rates to better reflect the full cost of providing part 170 services;

2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise §§170.21 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties or other civil sanctions;

4. Revise §§170.2 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activities associated with unlicensed sites in decommissioning conducted under NRC oversight;

5. Revise §170.11 to clarify that certain fee waivers need to be requested from, and granted by, the CFO in writing;

6. Apply the existing policy at §170.12 of full cost recovery for project managers to license renewal project managers; and 



7. Make minor administrative changes to §170.31 to enhance consistency in the identification of fee categories between parts 170 and 171.

the final FY 2004 final rule was published (i.e., this FY 2004 carryover was used to reduce the FY 2005 fees).

Table III below shows the proposed rebaselined annual fees for FY 2005 for a representative list of categories of licenses. The FY 2004 fee is also shown for comparative purposes.

TABLE III. - REBASELINED ANNUAL FEES FOR FY 2005

<u>Class/category of licenses</u>	<u>FY 2004</u>	<u>FY 2005</u>
	<u>Annual Fee</u>	<u>Annual Fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,283,000	\$3,066,000
Spent Fuel Storage/Reactor Decommissioning	203,000	164,000
Test and Research Reactors (Nonpower Reactors)	62,500	54,400
High Enriched Uranium Fuel Facility	4,573,000	6,234,000
Low Enriched Uranium Fuel Facility	1,533,000	1,867,000
UF <sub>6</sub> Conversion Facility	657,000	800,000
Conventional Mills	14,500	27,700
Transportation: ^ Users/Fabricators	91,300	80,200
^ Users Only	7,400	4,300
Typical Materials Users: ^ Radiographers	11,900	12,800
^ Well Loggers	4,600	4,100

decommissioning costs associated with  
 unlicensed sites, formerly referred to as site  
 decommissioning management plan  
 activities not recovered under part 170; also  
 includes activities associated with unregistered  
 general licensees) ..... \$3.5

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 educational  
 institutions ..... \$8.8

b. Licensing and inspection activities  
 associated with other Federal agencies ..... \$1.4

c. Costs not recovered from small entities  
 under 10 CFR § 171.16(c) ..... \$5.9

3. Activities supporting NRC operating licensees  
 and others:

a. Regulatory support to Agreement States<sup>1</sup> ..... \$13.9

b. Generic decommissioning/reclamation (except  
 those related to power reactors) ..... \$10.0

Total surcharge costs ..... \$61.6

Less 10 percent of NRC's FY 2005 total budget (less NWF) ..... -60.1

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<sup>1</sup>This estimate includes the costs of homeland security activities associated with sources in Agreement States, even though regulatory authority remains with the NRC for these activities. However, fees are not assessed to sources in Agreement States for these activities, therefore these costs are included in this surcharge category.

Uranium Recovery	---	---	0.4	0	0
Total Surcharge	100	2.8	100.0	1.5	4.3

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Website address <http://www.nrc.gov/reading-rm/adams.html>. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

a. Fuel Facilities

The FY 2005 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately \$27.6 million compared to \$21.6 million in FY 2004. The annual fee increase is partly attributable to the decrease in estimated part 170 revenue for the fuel facility class compared to FY 2004. This FY 2005 decrease results partly from part 170 fuel facilities' revenue in FY 2004 including a one-time \$2.1 million adjustment (increase) for revenue to account for fuel facilities fees that were improperly coded (i.e., costs associated with the Duke Cogema Stone and Webster application) and not factored into the fee calculations for FY 2001, FY 2002, and FY 2003, as discussed in the FY 2004 final fee rule. Annual fees also increase is due to an increase in budgeted resources for this class of licensees. The annual fees are allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents);

(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; and

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. 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 relative weighted factors per facility type for the various categories of specifically licensed Title II uranium recovery licensees are as follows:

support and oversight activities for Utah, as for any other Agreement State, would be recovered through the surcharge, consistent with existing fee policy.

#### 4. Fee Waivers

The NRC is proposing to modify §171.11(c) to eliminate 'size of the reactor' as a consideration in evaluating annual fee exemption requests. In the Statement of Consideration in the 1986 final fee rule (51 FR 33227; September 18, 1986), the Commission decided against determining its fees based on the size of the reactor because it found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Because it was not the Commission's intent to issue a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it ~~added~~ an annual fee exemption provision which takes reactor size, age, and other relevant factors into consideration.

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passive voice

However, none of these smaller reactors is still licensed to operate. For several years the NRC has issued no waivers on the basis of size. Moreover, the NRC streamlined its fee program in the FY 1995 final fee rule (60 FR 32218; June 20, 1995) by establishing a uniform annual fee for power reactors, based on an analysis that showed that the difference in fees resulting from a breakdown of reactors into different fee categories was small relative to the amount of the annual fee per reactor. Therefore, the NRC believes that the current reference to 'size of the reactor' in §171.11(c), as a consideration in evaluating annual fee exemption requests, is no longer needed. No other class of licensee contains an exemption provision based on size.

#### 5. Administrative Amendments

The NRC is proposing to eliminate reference to specific facility names under Category 1.A of the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by the NRC' in §171.16. This administrative change would be made to streamline the fee schedule in light of the fact that the listing of individual facilities within a fee category is not necessary to identify license fee amounts. Given this change, a licensee within Category 1.A would determine its annual fee amount by the fee subcategory assigned to its license, as is the practice for other licensees.

Additionally, the NRC is proposing to modify §§171.15(d)(1)(ii) and 171.16(e)(2) to clarify that activities comprising the annual fee surcharge include activities associated with unlicensed sites and unregistered general licensees. Currently, these paragraphs state that complex materials site decommissioning activities not covered under part 170 are included in the surcharge. Because this surcharge category also includes part 171, or generic costs associated with these decommissioning sites, the NRC is proposing to eliminate the phrase, 'not covered under part 170.' (Note that if the regulatory revision to charge unlicensed sites in decommissioning, as previously discussed, is implemented, this surcharge category would not include part 170 activities associated with these sites.) In addition, activities associated with unregistered general licensees are included in this surcharge category.

Finally, the NRC is proposing to include, for each fee subcategory listed in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at §171.16(d), a unique number or letter identifier, and to make other minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171. This change would enhance

on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading "ADDRESSES" above.

#### IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC would amend the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2005 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### V. 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 assessment nor an environmental impact statement 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.

#### VI. Paperwork Reduction Act Statement

upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

### VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 90 percent of its FY 2005 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

*Federal Register Format*

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2005. 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. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR §2.810. 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 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 2005.

### IX. 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 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.

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### 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; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. §553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.

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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: Sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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

§170.2 Scope.

\* \* \* \* \*

(t) An owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

3. In §170.11, paragraphs (a)(1)(iii)(A)(1) and (2) are revised and paragraph (3) is added to read as follows:

§170.11 Exemptions.

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(1) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements);

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(2) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(1) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned; and

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(3) The fee exemption is requested in writing by the person submitting the report/request to the Chief Financial Officer in accordance with 10 CFR 170.5, and the Chief Financial Officer grants this request in writing.

\* \* \* \* \*

4. 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 re-qualification 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:

(a) Reactor Program (§170.21 Activities): \$205 per hour

(b) Nuclear Materials and Nuclear Waste Program

(§170.31 Activities): \$198 per hour

Application – new license, or amendment ..... \$12,900.

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, or amendment ..... \$7,500.

3. Application for export of components requiring only the assistance of the Executive Branch to obtain foreign government assurances.

Application – new license, or amendment ..... \$2,400.

4. Application for export of facility components and equipment (examples provided in 10 CFR <sup>part</sup> 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.

Application – new license, or amendment ..... \$1,600.

5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and

See page 52 for consistency

- 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 ..... \$19,300.

- 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 ..... \$19,300.

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

Application — each source ..... \$2,200.

- 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 ..... \$750.

10. Transportation of radioactive material:

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

- 1. Spent Fuel, High-Level Waste, and

A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). This category includes application for export and import of radioactive waste.

Application — new license, or amendment ..... \$12,900.

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B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes application for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.

Application — new license, or amendment ..... \$7,500.

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C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances.

Application — new license, or amendment ..... \$2,400.

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D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. 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 located in the

same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

Application <sup>^</sup> new license, or amendment ..... \$1,600.

E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.

Amendment ..... \$300.

16. Reciprocity:

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

Application ..... \$1,800.

17. Master materials licenses of broad scope issued to Government agencies ..... N/A<sup>5</sup>

18. Department of Energy

A. Certificates of Compliance ..... N/A<sup>5</sup>

B. Uranium Mill Tailing Radiation ..... N/A<sup>5</sup>

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

(e) Generally licensed device registrations under 10 CFR 31.5. Submittals of registration information must be accompanied by the prescribed fee.

<sup>2</sup> Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. 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 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. 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> The NRC does not charge part 170 fees to Federal agencies, per 31 U.S.C. 9701.

**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.**

7. 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. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

8. Section 171.11 is amended by removing paragraph (b)(2), and paragraphs (b)(3), (b)(4), and (b)(5) are redesignated as (b)(2), (b)(3), and (b)(4), respectively.

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§171.11 [Amended].

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9. In §171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

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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 ..... 14,700.

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 ..... 6,100.

N. Licenses that authorize services for other licensees, except:

(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4A, 4B, and 4C ..... 6,600.

*not 2 categories*

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 ..... 12,800.

P. All other specific byproduct material licenses, except those in Categories 4A through 9D ..... 2,500.

Q. Registration of devices generally licensed pursuant to part 31 of this chapter under ..... N/A<sup>13</sup>

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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 ..... N/A<sup>5</sup>

B. Licenses specifically authorizing the receipt of waste byproduct material,

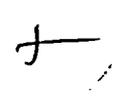
- C. Licenses for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances. .... N/A<sup>8</sup>
  
- D. Licenses for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes licenses 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 located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. .... N/A<sup>8</sup>
  
- E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. .... N/A<sup>8</sup>
  
- 16. Reciprocity ..... N/A<sup>8</sup>
  
- 17. Master materials licenses of broad scope issued to Government agencies ..... 251,000.

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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.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. 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.

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 FY 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.

is either \$2,300 or \$500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 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 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration." This means that 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 \$1,150 or \$250 for each fee category billed (instead of the full small entity annual fee of \$2,300 or \$500).

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE 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 Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact 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 20555-0001, Attention: Office of the Chief Financial Officer.