



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

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MAY 25 1989

MEMORANDUM FOR: Jesse L. Funches, Director, NMSS/PMDA  
John E. Glenn, Chief, NMSS/IMAB  
Robert L. Fonger, OGC  
Vandy L. Miller, GPA/SLITP  
Donnie H. Grimsley, Director, ADM/DFIPS

FROM: Lee Hiller, Deputy Controller

SUBJECT: PROPOSED RULE TO AMEND 10 CFR 170

Enclosed for your review and comment is a copy of a draft staff paper to the Commission and a Notice of Proposed Rulemaking to revise license and inspection fees for the small materials programs.

Please plan to meet with me on June 1, 1989, MNBB 6507, at 1:30 p.m. to discuss your comments.

Our comments on the proposed fees are shown on Attachment 1. Thank you for your cooperation in this matter.

*Lee Hiller*  
Lee Hiller  
Deputy Controller

Enclosures:  
As stated

cc: Claudia Seelig, OEDO

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Our review of the proposed fees compared to the current fees shows the following:

1. The renewal fees are higher than the application fees for a new license for categories 1C, 3B, 3M, 3P, and 7C. Categories 3P and 7C comprise about 70 percent of the small licenses subject to fees.
2. The renewal and amendment fees for Category 3B are higher than the renewal and amendment fees for Category 3A.
3. The amendment fee for Category 1D is less than the amendment fees for Categories 1C and 3P.
4. The renewal fee for Category 3E is higher than the renewal fee for Category 3F.
5. The inspection fees for Category 3A are less than the inspection fees for Category 3C.
6. The licensing fees (new license, renewal and amendment) in Category 3I are greater than those in Category 3H while the inspection fees are the same.
7. The renewal fee for Category 3K is greater than the renewal fee for Category 3J.
8. The amendment fee for Category 3M is greater than the amendment fee for Category 3L.
9. The new license and amendment fees for Category 7A are greater than the new license and amendment fees for Category 7B.
10. The amendment fee for Category 7C is higher than the amendment fee for Category 7B.
11. The amendment fee for Category 4C is higher than the amendment fee for Category 4B.

For: The Commissioners

From: Victor Stello, Jr.  
Executive Director for Operations

Subject: LICENSE FEES - PROPOSED SCHEDULE

Purpose: To obtain Commission approval to publish for public comment a proposed revision of 10 CFR Part 170.

Category: This paper covers a major policy matter requiring Commission approval.

Background: On December 29, 1988 (53 FR 52632), the Commission published a Final ~~Notice of Rulemaking~~ which amended its regulations by revising its fee schedules contained in 10 CFR Parts 170 and 171. The revised schedules were adopted to permit NRC to more fully recover costs incurred for the review of applications for licenses, license amendments, and other identifiable services. The fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) and for inspections of those programs were not revised except to provide for assessment of fees for each inspection conducted. The Commission indicated in the final rule that a rulemaking to update the materials fee schedule in 10 CFR 170.31 would be initiated in 1989.

Discussion: 10 CFR Part 170 fees recover NRC costs directly attributable to an identifiable applicant or licensee such as license application reviews and inspections. Legal authority for such recovery is

found in the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). The proposed amendments would (1) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs including the addition of byproduct material applications for decommissioning, (2) amend 10 CFR 170.20 to change the cost per professional staff hour from \$86 based on the FY 1989 budget to \$95 per hour based on the FY 1990 budget, (3) delete exemption provisions in 10 CFR 170.11(a)(3) and clarify (a)(5) for ease of administration in collecting fees, (4) add a new exemption provision in 10 CFR 170.11(a)(11) to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (5) revise 10 CFR 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives.

The fees as proposed are based on the FY 1990 budget. The current fees are based on the FY 1981 budget. The proposed fees show an increase in many categories of licenses. For example, shown below is a comparison of the current and proposed fees for two major categories of licenses. Category 3P (all other industrial use) and Category 7C (doctors and hospitals) represent approximately 70 percent of all industrial and medical licenses issued by the Commission which are subject to fees.

## COMPARISON OF FEES

Type of Action	Fee Category 3P			Fee Category 7C		
	Cur. Fee	Prop. Fee	Percent Change	Cur. Fee	Prop. Fee	Percent Change
Application - New License	\$230	\$420	+ 83	\$530	\$ 590	+ 2
Renewal	120	450	+275	580	860	+ 48
Amendment	60	310	+417	120	350	+192
Routine Inspection	530	570	+ 4	480	1,500	+213
Nonroutine Inspection	530	760	+ 42	690	3,000	+334

The changes shown above are based on (1) the NRC's most recent experience (FY 1987/FY 1988) using standard review plans to process the actions received and (2) an increase in the hourly rates from \$58 (FY 1981) to \$95 (FY 1990) per hour (64 percent increase) in the licensing area and from \$53 to \$95 per hour (79 percent increase) in the inspection area.

The proposed fees reflect the average cost for the particular type or category of license, e.g., industrial radiography. NMSS has recommended that the NRC continue collecting materials license fees as "flat fees" rather than for the actual cost for each licensing action. The NMSS time reporting system does not record professional staff time per individual action. Instead, professional staff time expended for the review of applications is charged to a broad category of license, e.g., medical institutions. Changes to this approach would add an unnecessary burden on licensing reviewers, inspectors, and administrative support staff. The Section-by-Section Analysis of the proposed rule provides a more detailed presentation of the proposed revision and its impact on licensees.

Coordination: This paper has been coordinated with the Offices of Nuclear Material Safety and Safeguards, General Counsel, Governmental and Public Affairs, and Administration.

Recommendation: That the Commission--

1. Approve the enclosed proposed revision for publication in the Federal Register for a 30-day public comment period (Enclosure 1).
  
2. Note that:
  - a. The House Committee on Interior and Insular Affairs, the House Committee on Energy and Commerce, the Committee on Environment and Public Works, and the Budget and Appropriation Committees will be notified by letter (see Enclosure 2).
  
  - b. A public announcement will be issued when the proposed revision is filed with the Office of the Federal Register for publication (see Enclosure 3).
  
  - c. The Federal Register Notice will be mailed to all affected NRC licensees.

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Victor Stello, Jr.  
Executive Director for Operations

Enclosures:

1. Proposed Revision to 10 CFR 170
2. Draft Congressional Letter
3. Draft Public Announcement

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1. This proposed rule contains no information collection requirements and therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).
2. Action required under this proposed rule would be administrative and would not affect the environment; therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule. (10 CFR 220.113)
3. The proposed rule would not have a significant economic impact on a substantial number of small businesses.
4. The proposed rule is administrative and would increase fees for regulatory services provided by the NRC to radiisotope licensees. Accordingly, the Backfit rule (10 CFR 30.109) does not apply to this proposed rule.

RIN: 3150-AD-23

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

Revision of Fee Schedules: *Radioisotope Licenses*

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

(11)

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations <sup>increasing licensing and inspection</sup> and fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) ~~and for inspections of these programs.~~ The Commission ~~indicated in its final rule revisions published on December 29, 1988 (53 FR 52632), that a rulemaking on this issue would be initiated in 1989.~~ This revision is necessary to update the current fees. The revised schedule of fees will more completely recover costs incurred by the Commission in providing services to identifiable recipients. The proposed amendments would (1) update the schedule of fees ~~in 10 CFR 170.31~~ for small radioisotope programs including the addition of byproduct material applications for decommissioning, (2) ~~amend 10 CFR 170.20 to~~ change the cost per professional staff hour from \$86 to \$95 per hour based on the FY 1990 budget, (3) delete <sup>exemption</sup> provisions in ~~170.11(a)(9)~~ and clarify <sup>others</sup> (a)(5) for ease of administration, (4) add a new exemption ~~provision in 170.11(a)(11)~~ to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (5) ~~revise 10 CFR 170.12(h) to~~ request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives.



DATES: The comment period expires (30 days after publication) 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: Room 16H19 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30<sup>45</sup> a.m. and 4:15 p.m. (Telephone 301-492-1966).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington DC 20555, in the lower level of the Gelman Building. For further information contact: Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7351.

ALL  
CAPS

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Action
- III. Section-by-Section Analysis
- IV. Environmental Impact: Categorical Exclusion
- V. Paperwork Reduction Act Statement
- VI. Regulatory Analysis
- VII. Regulatory Flexibility Certification
- VIII. Backfit Analysis
- IX. List of Subjects

## I. Background

(53 FR 52632)

On December 29, 1988, the Commission published its final amended regulations which revised the fee schedules contained in 10 CFR Parts 170 and 171. In ~~item 4 of a~~ <sup>the</sup> response to comments (53 FR 52633) received on the ~~published proposed~~ rule, the Commission indicated that a portion of the 10 CFR Part 170 fee schedule for certain small materials licenses is outdated and in need of revision. The Commission further stated that a rulemaking on this issue would be initiated in 1989.

Part 170 implements Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). The fees assessed under Part 170 recover the costs to the NRC of providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) and for inspections of these programs were last revised on May 21, 1984 (49 FR 21293) <sup>The 1984 revision was</sup> based on cost and professional staff hour data for FY 1981. In the ~~revisions~~ <sup>final rule</sup> published on December 29, 1988, the previous policy of charging inspection fees based on the routine inspection frequency for small materials programs was changed to provide for the assessment of fees for each inspection under 10 CFR 170.31.

## II. Proposed Action

The Commission proposes to amend 10 CFR Part 170 to update the licensing and inspection fees for small materials programs to more fully recover costs for application reviews and other services based on FY 1987 and FY 1988 licensing and inspection data. In addition, it is proposed

that the professional hourly rate of \$86 for FY 1989 shown in 10 CFR 170.20 will be revised to \$95 per hour based on the FY 1990 budget.

The ~~agency workpapers~~ <sup>documentation</sup> which support these proposed changes to 10 CFR 170 are available in the Public Document Room at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

### III. Section-by-Section Analysis

The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations.

#### Part 170

##### Section 170.3 Definitions

Paragraph (o) is added to include a definition relating to Indian tribes and Indian organizations.

(o) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians. "Indian organization" means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

##### Section 170.11 Exemptions

Paragraph (a)(3) is being deleted in its entirety. Fees for any byproduct, source or special nuclear materials licenses issued under 10

CFR Parts 30, 40, 70, or 71 that are considered to be incidental to operation of a nuclear reactor will be charged under the respective materials fee category rather than under the 10 CFR Part 50 reactor fee category (as has been past practice). Therefore, for a special nuclear materials license or any other licenses which are required prior to operation of the reactor, e.g., startup sources, reactor fuel, or calibration or monitoring equipment, fees will be assessed under 10 CFR Part 170.21. If an applicant uses byproduct material for decontamination, in-house testing of their reactor components, or other activities required under the Commission's application process, fees will be assessed in accordance with 10 CFR Part 170.31.

Paragraph (a)(5) is changed, for clarification ~~purpose~~, to include certificates of compliance and other approvals.

Paragraph (a)(11) is added to provide that Indian tribes and Indian organizations will be exempt from license fees. Indian tribes are organized as governmental entities similar to State governments. Therefore, the Commission intends to exempt Indian tribes and Indian organizations from license fees in the same manner as States and government agencies.

#### Section 170.12 Payment of fees

Paragraphs (a), (b), (c) and (d) are revised to more clearly distinguish the fee payment requirements for materials licenses and approvals not subject to full cost from the requirements for other licensed activities that are subject to full cost.

Paragraph (h) is being revised to indicate that (1) payments may also be made by electronic fund transfer (EFT) and (2) that where specific instructions regarding payment are provided on the bills, payment should be made accordingly. It is the intent of the Commission to request payment by electronic fund transfer of those bills which are in excess of \$5,000. This change is being made to encourage timely receipts and deposits in accordance with U.S. Department of the Treasury regulations relating to cash management initiatives.

#### Section 170.20 Average cost per professional staff-hour

This section is modified to reflect an agency-wide professional staff-hour rate based on FY 1990 costs to the Agency. Accordingly, the proposed professional staff rate for the NRC for FY 1990 for all fee categories that are based on full cost is \$95 per hour, or \$166,800 thousand per FTE (professional staff year). For FY 1990, the budgeted obligations by direct program are: (1) Salaries and Benefits, \$196.40 million; (2) Administrative Support, \$87.95 million; (3) Travel, \$12.31 million, and (4) Program Support, \$178.34 million. In FY 1990, 1,618 FTEs are considered to be in direct support of NRC programs applicable to fees (see Table 1). Of the total 3,180 FTEs, 1,562 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of these 1,562 FTEs, a total of 286 FTEs and the resulting \$26.8 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

Table I Allocation of Direct FTEs by Office

Office	Number of Direct FTEs
NRR/SP	982.2
RESEARCH	155.0
NMSS	307.5
AEOD	93.1
ASLAP/ASLBP	22.2
ACRS	25.0
OGC	<u>33.0</u>
Total Direct FTE	1,618.0

Regional employees are counted in the office of the program each supports.

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific licensee or class of licensees) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All ~~such~~ direct FTEs are identified by office.
2. NRC plans, budgets, and controls on the following four major categories (see Table II):
  - (a) Salaries and Benefits.
  - (b) Administrative Support.
  - (c) Travel.
  - (d) Program Support.

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method which was described in the December 29, 1988 final rule and the FY 1990 budget, and excluding budgeted Program Support obligations, the remaining \$269.9 million allocated uniformly to the direct FTEs (1,618) results in a calculation of \$166,800 thousand per FTE for FY 1990 (an hourly rate of \$95).

Table II FY 1990 Budget by Major Category  
(\$ In Millions)

Salaries and benefits	\$196.40
Administrative support	87.95
Travel	<u>12.31</u>
Total nonprogram support obligations	\$296.66
Program support	<u>178.34</u>
Total budget	\$475.0

The Direct FTE Productive Hourly Rate (\$95/hour rounded down) is calculated by dividing the annual nonprogram support costs (\$269.9 million) less the amount applicable to exempted functions (\$26.8 million) by the

product of the direct FTE (1,618 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OBM Circular A-76, "Performance of Commercial Activities."

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Section 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects and inspections.

Although there are no changes to the facilities categories and types of fees, the professional hourly rate assessed for the services provided under the schedule is revised as shown in ~~Section~~ §170.20. Footnote 2 of ~~Section~~ §170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984 and December 29, 1988 rules, as appropriate. Any professional hours expended after the effective date of this rule will be assessed at the FY 1990 rates shown in this proposed rule.

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Section 170.31 Schedule of fees for materials licenses and other regulatory services.

The licensing and inspection fees in this section are modified to reflect the FY 1990 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. It includes the addition of a category for decommissioning applications for byproduct material. *After the effective date* ~~At such time as~~ *of* this <sup>final</sup> rule ~~becomes final,~~ *the fees shown in this proposed rule* it will apply to those decommissioning applications that are currently pending NRC review and subsequently filed applications.



Fee Category 3N is revised to include licenses which authorize leak test services, with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. This revision is in response to Health Physics Associates' July 22, 1988 comment on the June 27, 1988 proposed revision to 10 CFR 170, other comments received from applicants and licensees since the inception of the June 1984 ~~rule change~~ <sup>amendment</sup>, and to supporting information provided by the Office of Nuclear Materials Safety and Safeguards.

By letter dated July 19, 1988, Lixi, Inc. commented on the June 27, 1988 proposed rule that 10 CFR 170 should be revised to create a new category for diagnostic devices. Lixi believes doctors should be charged the same for medical use of the Lixi Imaging Scope as industrial users. At this time, it is not practical to make a separate category for each manufactured item. The fee Categories in 10 CFR 170.31 are based on the use of the material rather than specific types of products or equipment. In addition, in using the average-cost instead of the full-cost method for materials license fees, we recognize that variations will exist between licenses grouped within a single category. However, in developing the current fee categories, every effort was made to group licenses in the most logical and equitable manner.

Many licenses which authorize human use of diagnostic devices also authorize other medical uses of byproduct, source, or special nuclear material. These licenses are currently subject to fee Category 7C. If

a separate category existed for diagnostic devices only, these licenses could be subject the fees in Category 7C as well as any new category established.

For these reasons, applications for human use of the Lixi Imaging Scope and other diagnostic devices will continue to be subject to fee Category 7C and industrial uses of the Lixi Imaging Scope will continue to be subject to fee Category 3P.

Fee Category 10B is changed from full-cost to flat fees. This change is based on an analysis of the actual staff-hours expended for the review and approval of the Part 71 quality assurance programs.

#### IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule revision 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 this proposed revision.

#### V. Paperwork Reduction Act Statement

This proposed ~~revision~~ <sup>rule</sup> contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

## VI. Regulatory Analysis

The proposed revision was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (314 S.C. 9701) and the Commission's fee guidelines. These guidelines 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. 336 (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 Independent Offices Appropriation Act of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (1976); and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (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, when the U.S. Court of Appeals for the Fifth Circuit held in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (1979), cert. denied 44 U.S. 1102 (1980), that (1) the Nuclear Regulatory Commission 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 in the fee schedule the costs of unopposed hearings and of administrative and technical support services; (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.

This proposed rule revision will not have significant impact on state and local governments and geographical regions; on health, safety, and the environment; or create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects about 9,000 specific licenses under 10 CFR Parts 30-35, 40, 50, 60, 61, 70, 71 and 72. Approximately 8,000 of these licensees could be considered small entities, particularly in the area of materials licensing under Parts 30-35. The annual record keeping burden imposed by the proposed rule will not be increased for these licensees.

*The Reg. Flex. Act addresses total economic impact... not just recordkeeping. By raising fees charged to these licensees, the rule would have an economic impact on the licensees. The question becomes whether the economic impact could be considered significant in terms of the licensee's gross annual receipts. NRC may verify under the Reg. Flex. Act only if the increase in fees would not be considered significant.*

*or if the NRC has attempted to alleviate the costs as much as possible*

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Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

#### VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule because these amendments are mandated by 31 U.S.C. 9701.

The NRC does not believe that the increase in fees that would result from the adoption of this proposed rule would result in a significant economic impact on most waterfalls licensees. The increase in the annual cost that would be imposed on these licensees would not be significant in terms of their gross annual receipts.

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IX. List of Subjects - *Part 170*

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, 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. 555, the NRC is proposing to adopt the following amendments to 10 CFR Part 170.

PART 170 -- FEES FOR FACILITIES AND MATERIALS 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:

*W* 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, 88 Stat. 1242, as amended (41 U.S.C. 5841).

2. In §170.3, paragraph (o) is added to read as follows:

§ 170.3 Definitions.

\* \* \* \* \*

(o) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians. Indian organization means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

\* \* \* \* \*

3. In §170.11, paragraph (a)(3) is ~~deleted in its entirety~~; *Removed*

*paragraph* (a)(5) is ~~amended to add certificates of compliance and other approvals~~ *Revised*  
*paragraph* and *Read as follows* (a)(11) is added to ~~address Indian tribes and Indian organizations.~~

§ 170.11 Exemptions.

\* \* \* \* \*

(o) \* \* \*

*Q* (a)(3) ~~deleted.~~ *[Reserved]*

\* \* \* \* \*



*(a)*(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except for a utilization facility designed to produce electrical or heat energy pursuant to Section 103 or 104b of the Atomic Energy Act of 1954, as amended.

\* \* \* \* \*

*(a)*(11) A license for possession and use of byproduct material, source material, or special nuclear material or other approval applied for by or issued to an Indian tribe or Indian organization.

\* \* \* \* \*

4. In §170.12, paragraphs (a), (b), (c), and (d) <sup>and (h)</sup> are revised to read as follows:

§ 170.12 Payment of fees.

(a) Application fees. Each application for which a fee is prescribed <sup>(must)</sup> ~~shall~~ be accompanied by a remittance in the full amount of the fee.

Applications for which no remittance is received may be returned to the applicant. All application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

(b) License fees.

(1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Except as provided in <sup>paragraph (b)</sup> ~~item (3)~~ below, each applicant will be billed at six-month intervals for all accumulated costs <sup>of this section</sup> for each application the applicant has on file for review by the Commis-

svon until the review is completed. Each bill will identify the applications and costs related to each.

(3) For early site reviews issued under 10 CFR 52, there is no application fee. Fees for the review of an application for an early site permit are deferred as follows: The permit holder shall pay the applicable fees for the permit at the time an application for a construction permit or combined license referencing the early site permit is filed. If, at the end of the initial 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. Each bill will identify the applications and costs related to each.

(c) Amendment fees and other required approvals.

(1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed except for amendment and other approvals for early site permits which will be billed in a deferred manner consistent with that addressed in ~~item~~ <sup>POKOSKOPH</sup> (d)(4) below. Each bill will identify the applications and costs related to each. *(of this section)*

(d) Renewal fees <sup>o</sup>

(1) Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to full cost recovery are payable upon notification by the Commission. Except as noted in items (3) and (4) below, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Fees for review of an application for renewal of a standard design certification shall be deferred 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 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 costs are not recovered, within ten years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the review of the application for renewal, or remainder of those costs, at that time.

(4) Fees for the review of an application for renewal of an early site permit shall 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.

\* \* \* \* \*

(h) Method of Payment. Fee payments ~~shall~~<sup>must</sup> be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Where specific payment instructions are provided on the bills to applicants or licensees, payment should be made accordingly.

\* \* \* \* \*

5. 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 approvals and inspections under §§ 170.21 and 170.31 will be calculated based upon the full costs for the review using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff rate for the NRC for FY 1990 is \$95 per hour.

6. In Section 170.21, Footnote 2 to the schedule is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

\* \* \* \* \*

<sup>2</sup>Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application or to conduct the inspection. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 and January 30, 1989 rule revisions, as appropriate. For those applications currently on file for which review costs have reached the applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. In no event will the total review costs be less than \$150.

7. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses and other regulatory services and holders of materials 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)

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<u>Category of materials licenses and type of fees<sup>1</sup></u>	<u>Fee<sup>2,3</sup></u>
--	--------------------------

1. Special nuclear material:

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

Application .....	\$ 150
License, Renewal, Amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

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

Application .....	\$ 150
License, Renewal, Amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

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

*half-up*

Application - New license .....	\$ 420
Renewal .....	\$ 450
Amendment .....	\$ 310
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$1,900

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: 4

Application - New license .....	\$ 570
Renewal .....	\$ 570
Amendment .....	\$ 190
Inspections:	
Routine .....	\$ 850
Nonroutine .....	\$1,100

2. Source material:

- A. 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:



Application .....	\$ 150
License, Renewal, Amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):

Application - New license .....	\$ 100
Renewal .....	\$ 100
Amendment .....	\$ 100
Inspections:	
Routine .....	\$ 950
Nonroutine .....	\$1,300

C. All other source material licenses:

Application - New license .....	\$ 660
Renewal .....	\$ 630
Amendment .....	\$ 370
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$2,300

3. Byproduct material:

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

Application - New license .....	\$1,900
Renewal .....	\$1,100
Amendment .....	\$ 190
Inspections: 5	
Routine .....	\$1,500
Nonroutine .....	\$2,300

B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.

Application - New license .....	\$1,100
Renewal .....	\$1,900
Amendment .....	\$ 460
Inspections: 5	
Routine .....	\$ 760
Nonroutine .....	\$1,500

half up

9

C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New License .....	\$2,800
Renewal .....	\$1,200
Amendment .....	\$ 380
Inspections:	
Routine .....	\$1,700
Nonroutine .....	\$3,000

D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:

Application - New License .....	\$ 930
Renewal .....	\$ 410
Amendment .....	\$ 260
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$2,300

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New License .....	\$ 410
Renewal .....	\$ 390
Amendment .....	\$ 210
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$2,300

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:

Application - New License .....	\$ 950
Renewal .....	\$ 330
Amendment .....	\$ 290
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$3,000

- 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:

Application - New License .....	\$3,800
Renewal .....	\$1,500
Amendment .....	\$ 380
Inspections:	
Routine .....	\$1,900
Nonroutine .....	\$3,400

- H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing

redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New License .....	\$1,800
Renewal .....	\$ 870
Amendment .....	\$ 210
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

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

Application - New License .....	\$2,200
Renewal .....	\$ 990
Amendment .....	\$ 290
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

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

Application - New License .....	\$2,100
Renewal .....	\$ 480
Amendment .....	\$ 320
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New License .....	\$1,500
Renewal .....	\$ 770
Amendment .....	\$ 240
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

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

Application - New License .....	\$1,900
Renewal .....	\$1,600
Amendment .....	\$ 420



Inspections:

Routine .....	\$2,300
Nonroutine .....	\$3,800

M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application - New License .....	\$ 930
Renewal .....	\$1,100
Amendment .....	\$ 520

Inspections:

Routine .....	\$1,100
Nonroutine .....	\$2,300

N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application - New License .....	\$1,100
Renewal .....	\$ 670

Amendment .....	\$ 330
Inspections:	
Routine .....	\$ 570
Nonroutine .....	\$1,100

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

Application - New License .....	\$2,500
Renewal .....	\$1,500
Amendment .....	\$ 400
Inspections:5	
Routine .....	\$1,100
Nonroutine .....	\$2,300

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

Application - New License .....	\$ 420
Renewal .....	\$ 450
Amendment .....	\$ 310
Inspections:	
Routine .....	\$ 570
Nonroutine .....	\$ 760

## 4. Waste disposal:

- A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:

Application .....	\$ 150
License, renewal, amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the

material by transfer to another person authorized to receive or dispose of the material:

Application - New License .....	\$2,300
Renewal .....	\$1,500
Amendment .....	\$ 160
Inspections:	
Routine .....	\$1,200
Nonroutine .....	\$2,300

C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New License .....	\$1,500
Renewal .....	\$ 760
Amendment .....	\$ 190
Inspections:	
Routine .....	\$ 570
Nonroutine .....	\$1,100

5. Well logging:

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

Application - New License .....	\$2,800
Renewal .....	\$1,700
Amendment .....	\$ 450
Inspections:	
Routine .....	\$ 380
Nonroutine .....	\$ 760

B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:

Application .....	\$ 150
License, renewal, amendment .....	Full Cost
Inspections:	
Routine .....	\$ 750
Nonroutine .....	\$1,500

## 6. Nuclear laundries:

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

Application - New License .....	\$1,100
Renewal .....	\$1,100
Amendment .....	\$ 290
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$2,300

## 7. Human use of byproduct, source, or special nuclear material:

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

Application - New License .....	\$2,700
Renewal .....	\$ 660
Amendment .....	\$ 350

Inspections:

Routine .....	\$1,500
Nonroutine .....	\$3,000

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

Application - New License .....	\$1,900
Renewal .....	\$1,600
Amendment .....	\$ 300

Inspections:

Routine .....	\$2,300
Nonroutine .....	\$3,800

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

source material, or special nuclear material in  
sealed sources contained in teletherapy devices:

Application - New License .....	\$ 590
Renewal .....	\$ 950
Amendment .....	\$ 350
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$3,000

8. Civil defense:

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

Application - New License .....	\$ 480
Renewal .....	\$ 330
Amendment .....	\$ 260
Inspections:	
Routine .....	\$ 290
Nonroutine .....	\$ 570



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 .....	\$2,700
Amendment - each device .....	\$ 950
Inspections .....	None

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 .....	\$1,300
Amendment - each device .....	\$ 480
Inspections .....	None

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

Application - each source .....	\$ 570
Amendment - each source .....	\$ 200
Inspections .....	None

- 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 .....	\$ 290
Amendment - each source .....	\$ 100
Inspections .....	None

10. Transportation of radioactive material:

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

Application .....	\$ 150
Approval, Renewal, Amendment .....	Full Cost
Inspections .....	None

## B. Evaluation of Part 71 quality assurance programs:

Application - Approval .....	\$ 190
Renewal .....	190
Amendment .....	190
Inspections .....	None

## 11. Review of standardized spent fuel facilities:

Application .....	\$ 150
Approval, Renewal, Amendment .....	Full Cost
Inspections .....	None

## 12. Special projects:

Application .....	\$ 150
Approval, Renewal, Amendment .....	Full Cost
Inspections .....	None

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

Application .....	\$ 150
Approvals .....	Full Cost
Amendments, revisions and supplements .....	Full Cost
Reapproval .....	Full Cost

B. Inspections of spent fuel storage  
cask Certificate of Compliance:

Routine ..... Full Cost  
Nonroutine ..... Full Cost

C. Inspections of storage of spent fuel  
under § 72.210:

Routine ..... Full Cost  
Nonroutine ..... Full Cost

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

Application ..... \$ 150  
Approval, Renewal, Amendment ..... Full Cost  
Inspection:  
Routine ..... Full Cost  
Nonroutine ..... Full Cost

*part 10*

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1 Types of fees - Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals and inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals or those applications filed in support of expired licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) License/approval fees - For new licenses and approvals issued in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13 and 14, the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12(b), (e), and (f).

(c) Renewal fees - Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13 and 14 must be accompanied by an application fee of \$150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) Amendment fees - Applications for amendments must be accompanied by the prescribed amendment fees for each license affected. An application for an amendment to a license or approval classified in more than one 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, except that applications for

amendment of licenses in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 10B, 11, 12, 13 and 14 must be accompanied by an application fee of \$150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

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

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

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fee.

(e) Inspection fees - Separate charges will be assessed for each routine and non-routine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on

the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 of this part, to which any applicable contractual support service costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

174-01 — 2 Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

3 Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application or to conduct the inspection. For those applications currently on file and for which fees are determined based on the full cost

expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 and January 30, 1989 rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached through January 29, 1989 will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. In no event will the total review costs be less than the application fee.

h<sup>o</sup> 4-11

4 Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

5 For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

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Dated at Rockville, MD, this \_\_\_ th day of \_\_\_\_\_ 1989.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
Samuel J. Chilk,  
Secretary of the Commission.

Note: When the document is submitted for signature and publication, the complete signature block must appear on a page that contains several lines of document. This is a publication requirement imposed by the Office of the Federal Register.

OGC COMMENTS

5/25/89

DRAFT

AD 23-1

PDR

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations and fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) and for inspections of these programs. The Commission indicated in its final rule revisions published on December 29, 1988 (53 FR 52632), that a rulemaking on this issue would be initiated in 1989. This revision is necessary to update the current fees. The revised schedule of fees will more completely recover costs incurred by the Commission in providing services to identifiable recipients. The proposed amendments would (1) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs, including the addition of <sup>a fee for</sup> byproduct material applications for decommissioning, (2) amend 10 CFR 170.20 to change the cost per professional staff hour from \$86 to \$95 per hour based on the FY 1990 budget, (3) delete exemption provisions in 170.11(a)(3) and clarify (a)(5) for ease of administration, (4) add a new exemption provision in 170.11(a)(11) to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (5) revise 10 CFR 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives.

## I. Background

On December 29, 1988, the Commission published its final amended regulations which revised the fee schedules contained in 10 CFR Parts 170 and 171. <sup>(53 FR 52633)</sup> In item 4 of a response to comments <sup>(53 FR 52633)</sup> received on the published proposed rule, the Commission indicated that a portion of the 10 CFR Part 170 fee schedule for certain small materials licenses is outdated and in need of revision. The Commission further stated that a rulemaking on this issue would be initiated in 1989.

Part 170 implements Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). The fees assessed under Part 170 recover the costs to the NRC of providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fees for radioisotope licenses <sup>issued under 10 CFR</sup> ~~(small programs covered by~~ Parts 30, 40 and 70) <sup>licenses</sup> and for inspections of these ~~programs~~ were last revised on May 21, 1984 (49 FR 21293) based on cost and professional staff hour data for <sup>fiscal year (FY)</sup> FY 1981. In the revisions published on December 29, 1988, the previous policy of charging inspection fees based on the routine inspection frequency for small materials programs was changed to provide for the assessment of fees for each inspection under 10 CFR 170.31.

## II. Proposed Action

The Commission proposes to amend 10 CFR Part 170 to update the licensing and inspection fees for ~~small materials programs~~ <sup>licenses and inspections</sup> to more fully recover costs for application reviews and other services based on FY 1987 and FY 1988 licensing and inspection data. In addition, it is proposed

that the professional hourly rate of \$86 for FY 1989 shown in 10 CFR 170.20 will be revised to \$95 per hour based on the FY 1990 budget.

The agency workpapers which support these proposed changes to 10 CFR 170 are available in the Public Document Room at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

### III. Section-by-Section Analysis

The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations.

#### Part 170

##### Section 170.3 Definitions

Paragraph (o) is added to include a definition relating to Indian tribes and Indian organizations.

(o) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians. "Indian organization" means any group, association, partnership, corporation or other legal entity owned or controlled by <sup>an</sup> Indians, <sup>Tribe.</sup> ~~or a majority of whose members are Indians.~~

*Handwritten note:*  
 This is a handwritten note in the left margin, circled. It discusses the definition of "Indian tribe" and "Indian organization", mentioning "as eligible for benefits" and "no other Indians".

##### Section 170.11 Exemptions

Paragraph (a)(3) is being deleted in its entirety. Fees for any byproduct, source or special nuclear materials licenses issued under 10

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

*Citation  
2-25-83 FR etc*

Using this method which was described in the December 29, 1988 final rule and the FY 1990 budget, and excluding budgeted Program Support obligations, the remaining \$269.9 million allocated uniformly to the direct FTEs (1,618) results in a calculation of \$166,800 thousand per FTE for FY 1990 (an hourly rate of \$95).

Table II FY 1990 Budget by Major Category  
(\$ In Millions)

Salaries and benefits	\$196.40
Administrative support	87.95
Travel	<u>12.31</u>
Total nonprogram support obligations	\$296.66
Program support	<u>178.34</u>
Total budget	\$475.0

The Direct FTE Productive Hourly Rate (\$95/hour rounded down) is calculated by dividing the annual nonprogram support costs (\$269.9 million) less the amount applicable to exempted functions (\$26.8 million) by the



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PDR

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

MAY 25 1989

MEMORANDUM FOR: Jesse L. Funches, Director, NMSS/PMDA  
John E. Glenn, Chief, NMSS/IMAB  
Robert L. Forner, OGC  
Vandy L. Miller, GPA/SLITP  
Donnie H. Grimsley, Director, ADM/DFIPS

FROM: Lee Hiller, Deputy Controller

SUBJECT: PROPOSED RULE TO AMEND 10 CFR 170

Enclosed for your review and comment is a copy of a draft staff paper to the Commission and a Notice of Proposed Rulemaking to revise license and inspection fees for the small materials programs.

Please plan to meet with me on June 1, 1989, MNBB 6507, at 1:30 p.m. to discuss your comments.

Our comments on the proposed fees are shown on Attachment 1. Thank you for your cooperation in this matter.

*Lee Hiller*  
Lee Hiller  
Deputy Controller

Enclosures:  
As stated

cc: Claudia Seelig, OEDO

~~5912210291~~ 56PP

Our review of the proposed fees compared to the current fees shows the following:

1. The renewal fees are higher than the application fees for a new license for categories 1C, 3B, 3M, 3P, and 7C. Categories 3P and 7C comprise about 70 percent of the small licenses subject to fees.
2. The renewal and amendment fees for Category 3B are higher than the renewal and amendment fees for Category 3A.
3. The amendment fee for Category 1D is less than the amendment fees for Categories 1C and 3P.
4. The renewal fee for Category 3E is higher than the renewal fee for Category 3F.
5. The inspection fees for Category 3A are less than the inspection fees for Category 3C.
6. The licensing fees (new license, renewal and amendment) in Category 3I are greater than those in Category 3H while the inspection fees are the same.
7. The renewal fee for Category 3K is greater than the renewal fee for Category 3J.
8. The amendment fee for Category 3M is greater than the amendment fee for Category 3L.
9. The new license and amendment fees for Category 7A are greater than the new license and amendment fees for Category 7B.
10. The amendment fee for Category 7C is higher than the amendment fee for Category 7B.
11. The amendment fee for Category 4C is higher than the amendment fee for Category 4B.

For: The Commissioners

From: Victor Stello, Jr.  
Executive Director for Operations

Subject: LICENSE FEES - PROPOSED SCHEDULE

Purpose: To obtain Commission approval to publish for public comment a proposed revision of 10 CFR Part 170.

Category: This paper covers a major policy matter requiring Commission approval.

Background: On December 29, 1988 (53 FR 52632), the Commission published a Final Notice of Rulemaking which amended its regulations by revising its fee schedules contained in 10 CFR Parts 170 and 171. The revised schedules were adopted to permit NRC to more fully recover costs incurred for the review of applications for licenses, license amendments, and other identifiable services. The fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) and for inspections of those programs were not revised except to provide for assessment of fees for each inspection conducted. The Commission indicated in the final rule that a rulemaking to update the materials fee schedule in 10 CFR 170.31 would be initiated in 1989.

Discussion: 10 CFR Part 170 fees recover NRC costs directly attributable to an identifiable applicant or licensee such as license application reviews and inspections. Legal authority for such recovery is



found in the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). The proposed amendments would (1) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs including the addition of byproduct material applications for decommissioning, (2) amend 10 CFR 170.20 to change the cost per professional staff hour from \$86 based on the FY 1989 budget to \$95 per hour based on the FY 1990 budget, (3) delete exemption provisions in 10 CFR 170.11(a)(3) and clarify (a)(5) for ease of administration in collecting fees, (4) add a new exemption provision in 10 CFR 170.11(a)(11) to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (5) revise 10 CFR 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives.

The fees as proposed are based on the FY 1990 budget. The current fees are based on the FY 1981 budget. The proposed fees show an increase in many categories of licenses. For example, shown below is a comparison of the current and proposed fees for two major categories of licenses. Category 3P (all other industrial use) and Category 7C (doctors and hospitals) represent approximately 70 percent of all industrial and medical licenses issued by the Commission which are subject to fees.

## COMPARISON OF FEES

Type of Action	Fee Category 3P			Fee Category 7C		
	Cur. Fee	Prop. Fee	Percent Change	Cur. Fee	Prop. Fee	Percent Change
Application - New License	\$230	\$420	+ 83	\$580	\$ 590	+ 2
Renewal	120	450	+275	580	860	+ 48
Amendment	60	310	+417	120	350	+192
Routine Inspection	530	570	+ 4	480	1,500	+213
Nonroutine Inspection	530	760	+ 42	690	3,000	+334

The changes shown above are based on (1) the NRC's most recent experience (FY 1987/FY 1988) using standard review plans to process the actions received and (2) an increase in the hourly rates from \$58 (FY 1981) to \$95 (FY 1990) per hour (64 percent increase) in the licensing area and from \$53 to \$95 per hour (79 percent increase) in the inspection area.

The proposed fees reflect the average cost for the particular type or category of license, e.g., industrial radiography. NMSS has recommended that the NRC continue collecting materials license fees as "flat fees" rather than for the actual cost for each licensing action. The NMSS time reporting system does not record professional staff time per individual action. Instead, professional staff time expended for the review of applications is charged to a broad category of license, e.g., medical institutions. Changes to this approach would add an unnecessary burden on licensing reviewers, inspectors, and administrative support staff. The Section-by-Section Analysis of the proposed rule provides a more detailed presentation of the proposed revision and its impact on licensees.

Coordination: This paper has been coordinated with the Offices of Nuclear Material Safety and Safeguards, General Counsel, Governmental and Public Affairs, and Administration.

Recommendation: That the Commission--

1. Approve the enclosed proposed revision for publication in the Federal Register for a 30-day public comment period (Enclosure 1).

2. Note that:

- a. The House Committee on Interior and Insular Affairs, the House Committee on Energy and Commerce, the Committee on Environment and Public Works, and the Budget and Appropriation Committees will be notified by letter (see Enclosure 2).
- b. A public announcement will be issued when the proposed revision is filed with the Office of the Federal Register for publication (see Enclosure 3).
- c. The Federal Register Notice will be mailed to all affected NRC licensees.

Victor Stello, Jr.  
Executive Director for Operations

Enclosures:

1. Proposed Revision to 10 CFR 170
2. Draft Congressional Letter
3. Draft Public Announcement

NUCLEAR REGULATORY COMMISSION  
10 CFR Part 170  
Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations and fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) and for inspections of these programs. The Commission indicated in its final rule revisions published on December 29, 1988 (53 FR 52632), that a rulemaking on this issue would be initiated in 1989. This revision is necessary to update the current fees. The revised schedule of fees will more completely recover costs incurred by the Commission in providing services to identifiable recipients. The proposed amendments would (1) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs including the addition of byproduct material applications for decommissioning, (2) amend 10 CFR 170.20 to change the cost per professional staff hour from \$86 to \$95 per hour based on the FY 1990 budget, (3) delete exemption provisions in 170.11(a)(3) and clarify (a)(5) for ease of administration, (4) add a new exemption provision in 170.11(a)(11) to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (5) revise 10 CFR 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives.

DATES: The comment period expires (30 days after publication) 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: Room 16H19, 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. (Telephone 301-492-1966).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington DC 20555, in the lower level of the Gelman Building. For further information contact: Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7351.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Action
- III. Section-by-Section Analysis
- IV. Environmental Impact: Categorical Exclusion
- V. Paperwork Reduction Act Statement
- VI. Regulatory Analysis
- VII. Regulatory Flexibility Certification
- VIII. Backfit Analysis
- IX. List of Subjects

## I. Background

On December 29, 1988, the Commission published its final amended regulations which revised the fee schedules contained in 10 CFR Parts 170 and 171. In item 4 of a response to comments (53 FR 52633) received on the published proposed rule, the Commission indicated that a portion of the 10 CFR Part 170 fee schedule for certain small materials licenses is outdated and in need of revision. The Commission further stated that a rulemaking on this issue would be initiated in 1989.

Part 170 implements Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). The fees assessed under Part 170 recover the costs to the NRC of providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70) and for inspections of these programs were last revised on May 21, 1984 (49 FR 21293) based on cost and professional staff hour data for FY 1981. In the revisions published on December 29, 1988, the previous policy of charging inspection fees based on the routine inspection frequency for small materials programs was changed to provide for the assessment of fees for each inspection under 10 CFR 170.31.

## II. Proposed Action

The Commission proposes to amend 10 CFR Part 170 to update the licensing and inspection fees for small materials programs to more fully recover costs for application reviews and other services based on FY 1987 and FY 1988 licensing and inspection data. In addition, it is proposed

that the professional hourly rate of \$86 for FY 1989 shown in 10 CFR 170.20 will be revised to \$95 per hour based on the FY 1990 budget.

The agency workpapers which support these proposed changes to 10 CFR 170 are available in the Public Document Room at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

### III. Section-by-Section Analysis

The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to Title 10, Chapter 1, Code of Federal Regulations.

#### Part 170

##### Section 170.3 Definitions

Paragraph (o) is added to include a definition relating to Indian tribes and Indian organizations.

(o) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians. "Indian organization" means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

##### Section 170.11 Exemptions

Paragraph (a)(3) is being deleted in its entirety. Fees for any byproduct, source or special nuclear materials licenses issued under 10

CFR Parts 30, 40, 70, or 71 that are considered to be incidental to operation of a nuclear reactor will be charged under the respective materials fee category rather than under the 10 CFR Part 50 reactor fee category (as has been past practice). Therefore, for a special nuclear materials license or any other licenses which are required prior to operation of the reactor, e.g., startup sources, reactor fuel, or calibration or monitoring equipment, fees will be assessed under 10 CFR Part 170.31 rather than Part 170.21. If an applicant possesses byproduct, source or special nuclear material for decontamination, inspection, repair, modification and testing of their reactor components, for which a license is required under the Commission's applicable materials regulations, fees will be assessed in accordance with 10 CFR Part 170.31.

Paragraph (a)(5) is changed, for clarification purposes, to include certificates of compliance and other approvals.

Paragraph (a)(11) is added to provide that Indian tribes and Indian organizations will be exempt from license fees. Indian tribes are organized as governmental entities similar to State governments. Therefore, the Commission intends to exempt Indian tribes and Indian organizations from license fees in the same manner as States and government agencies.

#### Section 170.12 Payment of fees

Paragraphs (a), (b), (c) and (d) are revised to more clearly distinguish the fee payment requirements for materials licenses and approvals not subject to full cost from the requirements for other licensed activities that are subject to full cost.



Paragraph (h) is being revised to indicate that (1) payments may also be made by electronic fund transfer (EFT) and (2) that where specific instructions regarding payment are provided on the bills, payment should be made accordingly. It is the intent of the Commission to request payment by electronic fund transfer of those bills which are in excess of \$5,000. This change is being made to encourage timely receipts and deposits in accordance with U.S. Department of the Treasury regulations relating to cash management initiatives.

#### Section 170.20 Average cost per professional staff-hour

This section is modified to reflect an agency-wide professional staff-hour rate based on FY 1990 costs to the Agency. Accordingly, the proposed professional staff rate for the NRC for FY 1990 for all fee categories that are based on full cost is \$95 per hour, or \$166,800 thousand per FTE (professional staff year). For FY 1990, the budgeted obligations by direct program are: (1) Salaries and Benefits, \$196.40 million; (2) Administrative Support, \$87.95 million; (3) Travel, \$12.31 million, and (4) Program Support, \$178.34 million. In FY 1990, 1,618 FTEs are considered to be in direct support of NRC programs applicable to fees (see Table 1). Of the total 3,180 FTEs, 1,562 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of these 1,562 FTEs, a total of 286 FTEs and the resulting \$26.8 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

Table I Allocation of Direct FTEs by Office

Office	Number of Direct FTEs <sup>1</sup>
NRR/SP	982.2
RESEARCH	155.0
NMSS	307.5
AEOD	93.1
ASLAP/ASLBP	22.2
ACRS	25.0
OGC	<u>33.0</u>
Total Direct FTE	1,618.0

<sup>1</sup>Regional employees are counted in the office of the program each supports.

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific licensee or class of licensees) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All such direct FTEs are identified by office.
2. NRC plans, budgets, and controls on the following four major categories (see Table II):
  - (a) Salaries and Benefits.
  - (b) Administrative Support.
  - (c) Travel.
  - (d) Program Support.

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method which was described in the December 29, 1988 final rule and the FY 1990 budget, and excluding budgeted Program Support obligations, the remaining \$269.9 million allocated uniformly to the direct FTEs (1,618) results in a calculation of \$166,800 thousand per FTE for FY 1990 (an hourly rate of \$95).

Table II FY 1990 Budget by Major Category  
(\$ In Millions)

Salaries and benefits	\$196.40
Administrative support	87.95
Travel	<u>12.31</u>
Total nonprogram support obligations	\$296.66
Program support	<u>178.34</u>
Total budget	\$475.0

The Direct FTE Productive Hourly Rate (\$95/hour rounded down) is calculated by dividing the annual nonprogram support costs (\$269.9 million) less the amount applicable to exempted functions (\$26.8 million) by the

product of the direct FTE (1,618 FTE) and the number of productive hours in one year (1,744 hours) as indicated in ORM Circular A-76, "Performance of Commercial Activities."

Section 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects and inspections.

Although there are no changes to the facilities categories and types of fees, the professional hourly rate assessed for the services provided under the schedule is revised as shown in Section 170.20. Footnote 2 of Section 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984 and December 29, 1988 rules, as appropriate. Any professional hours expended after the effective date of this rule will be assessed at the FY 1990 rates shown in this proposed rule.

Section 170.31 Schedule of fees for materials licenses and other regulatory services.

The licensing and inspection fees in this section are modified to reflect the FY 1990 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. It includes the addition of a category for decommissioning applications for byproduct material. At such time as this rule becomes final, it will apply to those decommissioning applications that are currently pending NRC review and subsequently filed applications.

Fee Category 3N is revised to include licenses which authorize leak test services, with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. This revision is in response to Health Physics Associates' July 22, 1988 comment on the June 27, 1988 proposed revision to 10 CFR 170, other comments received from applicants and licensees since the inception of the June 1984 rule change, and to supporting information provided by the Office of Nuclear Materials Safety and Safeguards.

By letter dated July 19, 1988, Lixi, Inc. commented on the June 27, 1988 proposed rule that 10 CFR 170 should be revised to create a new category for diagnostic devices. Lixi believes doctors should be charged the same for medical use of the Lixi Imaging Scope as industrial users. At this time, it is not practical to make a separate category for each manufactured item. The fee Categories in 10 CFR 170.31 are based on the use of the material rather than specific types of products or equipment. In addition, in using the average-cost instead of the full-cost method for materials license fees, we recognize that variations will exist between licenses grouped within a single category. However, in developing the current fee categories, every effort was made to group licenses in the most logical and equitable manner.

Many licenses which authorize human use of diagnostic devices also authorize other medical uses of byproduct, source, or special nuclear material. These licenses are currently subject to fee Category 7C. If

a separate category existed for diagnostic devices only, these licenses could be subject the fees in Category 7C as well as any new category established.

For these reasons, applications for human use of the Lixi Imaging Scope and other diagnostic devices will continue to be subject to fee Category 7C and industrial uses of the Lixi Imaging Scope will continue to be subject to fee Category 3P.

Fee Category 10B is changed from full-cost to flat fees. This change is based on an analysis of the actual staff-hours expended for the review and approval of the Part 71 quality assurance programs.

#### IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule revision 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 this proposed revision.

#### V. Paperwork Reduction Act Statement

This proposed revision contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

## VI. Regulatory Analysis

The proposed revision was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (314 S.C. 9701) and the Commission's fee guidelines. These guidelines 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. 336 (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 Independent Offices Appropriation Act of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (1976); and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (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, when the U.S. Court of Appeals for the Fifth Circuit held in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (1979), cert. denied 44 U.S. 1102 (1980), that (1) the Nuclear Regulatory Commission 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 in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (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.

This proposed rule revision will not have significant impact on state and local governments and geographical regions; on health, safety, and the environment; or create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

#### VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects about 9,000 specific licenses under 10 CFR Parts 30-35, 40, 50, 60, 61, 70, 71 and 72. Approximately 8,000 of these licensees could be considered small entities, particularly in the area of materials licensing under Parts 30-35. The annual record keeping burden imposed by the proposed rule will not be increased for these licensees.



Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

#### VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule because these amendments are mandated by 31 U.S.C. 9701.

IX. List of Subjects

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, 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 Part 170.

PART 170 -- FEES FOR FACILITIES AND MATERIALS 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, 88 Stat. 1242, as amended (41 U.S.C. 5841).

2. In §170.3, paragraph (o) is added to read as follows:

§ 170.3 Definitions.

\* \* \* \* \*

(o) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians. Indian organization means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

3. In §170.11, paragraph (a)(3) is deleted in its entirety; (a)(5) is amended to add certificates of compliance and other approvals and (a)(11) is added to address Indian tribes and Indian organizations.

§ 170.11 Exemptions.

\* \* \* \* \*

(a)(3) deleted.

\* \* \* \* \*

(a)(5) A construction permit, license, certificate of compliance or other approval applied for by, or issued to, a Government agency, except for a utilization facility designed to produce electrical or heat energy pursuant to Section 103 or 104b of the Atomic Energy Act of 1954, as amended.

\* \* \* \* \*

(a)(11) A license for possession and use of byproduct material, source material, or special nuclear material or other approval applied for by or issued to an Indian tribe or Indian organization.

\* \* \* \* \*

4. In §170.12, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 170.12 Payment of fees.

(a) Application fees. Each application for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. Applications for which no remittance is received may be returned to the applicant. All application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

(b) License fees.

(1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Except as provided in item (3) below, each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commis-

sion until the review is completed. Each bill will identify the applications and costs related to each.

(3) For early site reviews issued under 10 CFR 52, there is no application fee. Fees for the review of an application for an early site permit are deferred as follows: The permit holder shall pay the applicable fees for the permit at the time an application for a construction permit or combined license referencing the early site permit is filed. If, at the end of the initial 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. Each bill will identify the applications and costs related to each.

(c) Amendment fees and other required approvals.

(1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed except for amendment and other approvals for early site permits which will be billed in a deferred manner consistent with that addressed in item (d)(4) below. Each bill will identify the applications and costs related to each.

(d) Renewal fees

(1) Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to full cost recovery are payable upon notification by the Commission. Except as noted in items (3) and (4) below, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Fees for review of an application for renewal of a standard design certification shall be deferred 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 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 costs are not recovered, within ten years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the review of the application for renewal, or remainder of those costs, at that time.

(4) Fees for the review of an application for renewal of an early site permit shall 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.

\* \* \* \* \*

(h) Method of Payment. Fee payments shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Where specific payment instructions are provided on the bills to applicants or licensees, payment should be made accordingly.

5. 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 approvals and inspections under §§ 170.21 and 170.31 will be calculated based upon the full costs for the review using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff rate for the NRC for FY 1990 is \$95 per hour.

6. In Section 170.21, Footnote 2 to the schedule is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

\* \* \* \* \*

<sup>2</sup>Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application or to conduct the inspection. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 and January 30, 1989 rule revisions, as appropriate. For those applications currently on file for which review costs have reached the applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. In no event will the total review costs be less than \$150.

7. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses and other regulatory services and holders of materials 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 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:

Application .....	\$ 150
License, Renewal, Amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

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

Application .....	\$ 150
License, Renewal, Amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

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

Application - New license .....	\$ 420
Renewal .....	\$ 450
Amendment .....	\$ 310
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$1,500

- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:4

Application - New license .....	\$ 570
Renewal .....	\$ 570
Amendment .....	\$ 190
Inspections:	
Routine .....	\$ 850
Nonroutine .....	\$1,100

2. Source material:

- A. 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:

Application .....	\$ 150
License, Renewal, Amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):

Application - New license .....	\$ 100
Renewal .....	\$ 100
Amendment .....	\$ 100
Inspections:	
Routine .....	\$ 950
Nonroutine .....	\$1,300

C. All other source material licenses:

Application - New license .....	\$ 660
Renewal .....	\$ 630
Amendment .....	\$ 370
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$2,300

## 3. Byproduct material:

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

Application - New license .....	\$1,900
Renewal .....	\$1,100
Amendment .....	\$ 190
Inspections:5	
Routine .....	\$1,500
Nonroutine .....	\$2,300

- B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.

Application - New license .....	\$1,100
Renewal .....	\$1,900
Amendment .....	\$ 460
Inspections:5	
Routine .....	\$ 760
Nonroutine .....	\$1,500

- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radio-pharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New License .....	\$2,800
Renewal .....	\$1,200
Amendment .....	\$ 380
Inspections:	
Routine .....	\$1,700
Nonroutine .....	\$3,000

- D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution or redistribution of radio-pharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:

Application - New License .....	\$ 930
Renewal .....	\$ 410
Amendment .....	\$ 260
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$2,300

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New License .....	\$ 410
Renewal .....	\$ 390
Amendment .....	\$ 210
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$2,300

- 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:

Application - New License .....	\$ 950
Renewal .....	\$ 330
Amendment .....	\$ 290
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$3,000

- 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:

Application - New License .....	\$3,800
Renewal .....	\$1,500
Amendment .....	\$ 380
Inspections:	
Routine .....	\$1,900
Nonroutine .....	\$3,400

- H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing



redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New License .....	\$1,800
Renewal .....	\$ 870
Amendment .....	\$ 210
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

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

Application - New License .....	\$2,200
Renewal .....	\$ 990
Amendment .....	\$ 290
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

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

Application - New License .....	\$2,100
Renewal .....	\$ 480
Amendment .....	\$ 320
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

- K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New License .....	\$1,500
Renewal .....	\$ 770
Amendment .....	\$ 240
Inspections:	
Routine .....	\$ 760
Nonroutine .....	\$1,500

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

Application - New License .....	\$1,900
Renewal .....	\$1,600
Amendment .....	\$ 420

## Inspections:

Routine .....	\$2,300
Nonroutine .....	\$3,800

- M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application - New License .....	\$ 930
Renewal .....	\$1,100
Amendment .....	\$ 520
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$2,300

- N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application - New License .....	\$1,100
Renewal .....	\$ 670

Amendment .....	\$ 330
Inspections:	
Routine .....	\$ 570
Nonroutine .....	\$1,100

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

Application - New License .....	\$2,500
Renewal .....	\$1,500
Amendment .....	\$ 400
Inspections:5	
Routine .....	\$1,100
Nonroutine .....	\$2,300

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

Application - New License .....	\$ 420
Renewal .....	\$ 450
Amendment .....	\$ 310
Inspections:	
Routine .....	\$ 570
Nonroutine .....	\$ 760

## 4. Waste disposal:

- A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:

Application .....	\$ 150
License, renewal, amendment .....	Full Cost
Inspections:	
Routine .....	Full Cost
Nonroutine .....	Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the

material by transfer to another person authorized to receive or dispose of the material:

Application - New License .....	\$2,300
Renewal .....	\$1,500
Amendment .....	\$ 160
Inspections:	
Routine .....	\$1,200
Nonroutine .....	\$2,300

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New License .....	\$1,500
Renewal .....	\$ 760
Amendment .....	\$ 190
Inspections:	
Routine .....	\$ 570
Nonroutine .....	\$1,100

## E. Well logging:

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

Application - New License .....	\$2,800
Renewal .....	\$1,700
Amendment .....	\$ 450
Inspections:	
Routine .....	\$ 380
Nonroutine .....	\$ 760

- B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:

Application .....	\$ 150
License, renewal, amendment .....	Full Cost
Inspections:	
Routine .....	\$ 750
Nonroutine .....	\$1,500



## 6. Nuclear laundries:

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

Application - New License .....	\$1,100
Renewal .....	\$1,100
Amendment .....	\$ 290
Inspections:	
Routine .....	\$1,100
Nonroutine .....	\$2,300

## 7. Human use of byproduct, source, or special nuclear material:

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

Application - New License .....	\$2,700
Renewal .....	\$ 660
Amendment .....	\$ 350

Inspections:

Routine .....	\$1,500
Nonroutine .....	\$3,000

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

Application - New License .....	\$1,900
Renewal .....	\$1,600
Amendment .....	\$ 300

Inspections:

Routine .....	\$2,300
Nonroutine .....	\$3,800

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

source material, or special nuclear material in  
sealed sources contained in teletherapy devices:

Application - New License .....	\$ 590
Renewal .....	\$ 950
Amendment .....	\$ 350
Inspections:	
Routine .....	\$1,500
Nonroutine .....	\$3,000

8. Civil defense:

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

Application - New License .....	\$ 480
Renewal .....	\$ 330
Amendment .....	\$ 260
Inspections:	
Routine .....	\$ 290
Nonroutine .....	\$ 570

## 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 .....	\$2,700
Amendment - each device .....	\$ 950
Inspections .....	None

- 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 .....	\$1,300
Amendment - each device .....	\$ 480
Inspections .....	None

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

Application - each source .....	\$ 570
Amendment - each source .....	\$ 200
Inspections .....	None

- 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 .....	\$ 290
Amendment - each source .....	\$ 100
Inspections .....	None

10. Transportation of radioactive material:

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

Application .....	\$ 150
Approval, Renewal, Amendment .....	Full Cost
Inspections .....	None

## B. Evaluation of Part 71 quality assurance programs:

Application - Approval .....	\$ 190
Renewal .....	190
Amendment .....	190
Inspections .....	None

## 11. Review of standardized spent fuel facilities:

Application .....	\$ 150
Approval, Renewal, Amendment .....	Full Cost
Inspections .....	None

## 12. Special projects:

Application .....	\$ 150
Approval, Renewal, Amendment .....	Full Cost
Inspections .....	None

13. A Spent fuel storage cask Certificate  
of Compliance:

Application .....	\$ 150
Approvals .....	Full Cost
Amendments, revisions and supplements .....	Full Cost
Reapproval .....	Full Cost

- B. Inspections of spent fuel storage  
cask Certificate of Compliance:
  - Routine ..... Full Cost
  - Nonroutine ..... Full Cost

- C. Inspections of storage of spent fuel  
under § 72.210:
  - Routine ..... Full Cost
  - Nonroutine ..... Full Cost

- 14. Byproduct, source or special nuclear material  
licenses and other approvals authorizing  
decommissioning, decontamination, reclamation  
or site restoration activities pursuant to  
10 CFR 30, 40, 70 and 72:
  - Application ..... \$ 150
  - Approval, Renewal, Amendment ..... Full Cost
  - Inspection:
    - Routine ..... Full Cost
    - Nonroutine ..... Full Cost

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1 Types of fees - Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals and inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals or those applications filed in support of expired licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) License/approval fees - For new licenses and approvals issued in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13 and 14, the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12(b), (e), and (f).

(c) Renewal fees - Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13 and 14 must be accompanied by an application fee of \$150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) Amendment fees - Applications for amendments must be accompanied by the prescribed amendment fees for each license affected. An application for an amendment to a license or approval classified in more than one 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, except that applications for



amendment of licenses in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 10B, 11, 12, 13 and 14 must be accompanied by an application fee of \$150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

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

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

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fee.

(e) Inspection fees - Separate charges will be assessed for each routine and nonroutine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on

the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 of this part, to which any applicable contractual support service costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

2 Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for secondary source and device evaluations as shown in Categories 9A through 9D.

3 Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application or to conduct the inspection. For those applications currently on file and for which fees are determined based on the full cost

expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 and January 30, 1989 rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached through January 29, 1989 will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. In no event will the total review costs be less than the application fee.

4 Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

5 For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

Document Name:  
LTR TO MILAM

Requestor's ID:  
MORRISON

Author's Name:

Document Comments:

MAY 25 1989

MEMORANDUM FOR: Jesse L. Funches, Director, NMSS/PMDA  
John E. Glenn, Chief, NMSS/IMAB  
Robert L. Fonner, OGC  
Vandy L. Miller, GPA/SLITP  
Donnie H. Grimsley, Director, ADM/DFIPS

FROM: Lee Hiller, Deputy Controller

SUBJECT: PROPOSED RULE TO AMEND 10 CFR 170

Enclosed for your review and comment is a copy of a draft staff paper to the Commission and a Notice of Proposed Rulemaking to revise license and inspection fees for the small materials programs.

Please plan to meet with me on June 1, 1989, MNBB 6507, at 1:30 p.m. to discuss your comments.

Our comments on the proposed fees are shown on Attachment 1. Thank you for your cooperation in this matter.

Original signed by  
Lee Hiller  
Lee Hiller  
Deputy Controller

Enclosures:  
As stated

cc: Claudia Seelig, OEDO

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~~8912214241~~ 1p.

OFC	:	OC	:	OC	:	:	:	:	:
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DATE	:	5/25/89	:	5/27/89	:	:	:	:	:

JUL 05 1989

3

AD 23-1

TDR

NOTE TO: Bob Forner, UGC

8912010098 89/11/29

FROM: Jim Holloway, LFMB

Attached for your review and comment is our proposed change to the exemption provisions of §170.11 (a)(4) based on the attached memoranda from Ron Smith. We feel that the proposed change would minimize the difficulties in administering the exemption. We are proposing not to exempt activities performed under Government contracts since this would be contrary to our policy with other licensees such as the GE/NBS case (an exemption was denied for a certificate of compliance apply for by GE for a shipping container to be developed under contract with NBS). Should Government grants (such as the National Science Foundation) be treated the same as Government contracts?

Forner gave  
 verbal OK  
 in meeting in Feb  
 6/19

~~8912010098~~ 3pp

(For Section-by-Section Analysis)

Paragraph (a)(4) is changed to include all licenses applied for by, or issued to, non-profit educational institutions, except power reactors and materials licenses which authorize human use, commercial distribution, or service to other persons. If a non-profit educational institution provides services to other persons without charge, the exemption would apply. This change is in keeping with the concern of Congress with the impact of the current fee schedule on some entities. In establishing the annual fee requirement for NRC under section 7601 of the Consolidated Budget Reconciliation Act of 1985 (COBRA) 99 P. Law 272 (1986), both the House and Senate stated in the "Statement of Managers re NRC Fees" that the Commission should take into account when determining whether to modify the current fee schedule that certain Commission licensees, such as Universities, have limited ability to pass through the cost of these charges (annual charges) to the ultimate consumer. Additionally, the Commission has received several exemption requests from colleges and universities for licensed activities not covered by the current exemption.

(For §170.11(a))

(4) A construction permit or license applied for by, or issued to, a non-profit educational institution for, or in connection with, a production or utilization facility other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material except for licenses which authorize 1) human use; 2) services to other persons; 3) distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; and 4) activities performed under a Government agency contract.



AD 23-1  
PDR

8912010161

JUN 07 1989

89/11/29

MEMORANDUM FOR: Ronald M. Scroggins  
Controller

THRU: Graham D. Johnson, Director  
Division of Accounting and Finance, OC

FROM: C. James Holloway, Jr., Chief  
License Fee Management Branch, OC

SUBJECT: FEE EXEMPTION-SPOKANE TRIBAL MINING AND MINERALS  
DEPARTMENT INC.

We recently received an application dated April 4, 1989 for a source material license from the Spokane Indian Tribe to possess uranium ore at the Sherwood Uranium Facility, Wellpinit, WA.

In the past, applications filed by Indian tribes have been exempted from paying fees under 10 CFR 170. The guidance we have been following is based on a memorandum dated November 17, 1987, from the Office of General Counsel (OGC) (Enclosure 1). Since Indian tribes do not fall within the strict definition of a Federal Agency as defined in 10 CFR 170.3(b), nor are they considered a State agency, the fee exemption provisions of 170.11(a)(5) or 170.11(a)(9) do not apply to the application filed by the Spokane Tribe. OGC has indicated, however, that since Indian tribes are organized as governmental entities similar to State governments, consideration should be given to granting Indian tribes and their governmental organizations the same exemptions granted by the NRC to States and Government Agencies. Because Indian tribes are organized as Governmental entities similar to State governments, we recommend in accordance with 10 CFR 170.11(b)(1) that you grant an exemption from fees to the Spokane Tribe of Indians having determined that such exemption is authorized by law and is otherwise in the public interest.

~~8912010161~~ 2pp

In the proposed revision of 10 CFR 170, which will be sent to the Commission by the end of June 1989, a new exemption provision has been added (170.11(a)(11)) for those Indian Tribes federally recognized as eligible for services provided by the Secretary of the Interior. The Spokane Indian Tribe has been so recognized by the Secretary of the Interior (Enclosure 2).

C. James Holloway, Jr., Chief  
License Fee Management Branch  
Division of Accounting and Finance  
Office of the Controller

APPROVED:

Original signed by  
Ronald M. Scroggins

DATE: JUN 13 1989

Ronald M. Scroggins, Controller

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33  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

AD 23-1

PDR

JUN 14 1989

MEMORANDUM FOR: Ronald M. Scroggins, Director  
Office of the Controller

FROM: Robert M. Bernero, Director  
Office of Nuclear Material Safety  
and Safeguards

SUBJECT: LICENSE FEES

89 07 07 0262 XA

SFP

This memorandum responds to your request for NMSS reexamination of several licensee fee areas and a final office position on proposed changes to the licensee fee schedule.

As a general rule, NMSS believes that staff hours from RITS should be the bases for estimating licensee fees, with management judgment applied when the RITS data are not adequate. In this regard, a hierarchy exists in the time required to perform licensing reviews of new applications, renewals and amendments. That hierarchy is: new license application reviews take more time than renewals and license renewal reviews take more time than licensing amendment reviews. On the average, the manpower reporting data, staff experience and management judgment support this general finding. However, there are a limited number of cases where this general rule does not apply. Specifically, NMSS believes that the following classes of licensees require a different expenditure of staff time to complete the various licensing reviews.

1. LICENSE FEE CATEGORY 3B:

This class of licensees includes manufacturing and distribution operations utilizing a small number of radioisotopes, power source/SNM heat generation manufacturing and heart pacemaker manufacturing and distribution. The average of two years of recorded staff time to perform licensing reviews of this class of licensees indicate that new application reviews require about 11 hours, amendments require about 5 hours and renewals require about 20 hours. We attribute this situation to two factors. First, this type of licensee often has frequent amendments to add new products or to change existing descriptions of products or processes. The renewal process often requires a review of many documents to determine which descriptions are current and which have been superceded; a situation which does not occur with a new application. Second, companies applying for new licenses will on the average operate simpler programs using both smaller activities and varieties of radioisotopes than are utilized by the existing companies.

2. LICENSE FEE CATEGORY 7C:

This class of licensees included hospitals, medical centers, clinics, private physicians and mobile nuclear medicine services. The recorded staff time over a two year period indicates that on an average it requires

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about six hours to review a new application, four hours for an amendment and nine hours for a renewal. Please note that review time has decreased from the common time factor which was used to calculate the current fee schedule. Renewals require more time because the average new applicant for a medical use license is a small clinic or private physician who is requesting authorization to perform one or only a few medical procedures. The average medical use licensee renewing a license is an institution offering a full variety of diagnostic services and often some therapy services. Because of the total revision of 10 CFR Part 35 in 1987, new applicants and licensees renewing medical use licenses must submit complete applications and descriptions for all activities to be authorized. Thus the simplifications in the licensing process due to revision of 10 CFR Part 35 have helped reduce review time for the simpler programs being initiated more than for the existing programs with more activities to describe.

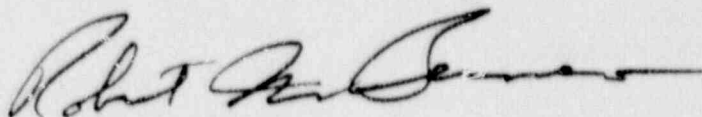
3. For several other classes of licensees (3E, 3M, 3P, and 6A) the recorded staff time indicated that the review time for renewals was greater than for new applications. However, further analysis and application of management judgment determined that the data were not representative of the usual situation or were based on small sample size. Therefore, we recommend that the time necessary to perform the review of a new or a renewal application should be approximately the same for these classes of licensees.

The NMSS inspection staff time rates included in 10 CFR Part 170 were developed based on recorded staff time, regional management estimates and management judgment. With this additional evaluation, NMSS now recommends that the hours charged for inspecting one class of licensee be reduced. License category 2B routine inspections require approximately 4 hours not 10, and non-routine inspections require 8 hours, not 14. With this change, NMSS has selected the more conservative manpower estimate in all cases. The proposed rates include all time necessary to complete a licensee inspection. That is, preparation for the inspection by going through the docket, file and other historical data to become familiar with the individual licensees operation, travel to the site, conducting the actual on-site inspection, return travel to the Regional or Headquarters Office and finally the preparation and approval of the inspection report describing and documenting the inspection. The NMSS experience with inspections of material licensees has shown a significant increase in the time required to perform these services.

This increase is due in large part to the NRC's response to the increasing number of incidents or events involving materials licensees, particularly medical use misadministrations. The Commission has demanded that greater regulatory oversight be provided to the nuclear material licensees and users. Therefore, the increase in inspection time is appropriate due to the more thorough inspections now being performed.

The foregoing information represents the NMSS position concerning the hours charged to service our various materials licensees.

Finally, I understand that during the meeting on license fees an option was discussed by OGC which would result in licensees being charged a single, fixed fee for services, but they would be billed over multi-years. We support that option, if it passes legal review. It would greatly reduce the administrative burden associated with license fee collection from material licensees.



Robert M. Bernero, Director  
Office of Nuclear Material Safety  
and Safeguards

cc: H. L. Thompson, Jr., DEDS

JUN 16 1989

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TDR

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Docket No. 40-8982

89/1/29

Spokane Tribe of Indians  
ATTN: Mr. Joe V. Flett  
P.O. Box 100  
Wellpinit, WA 99040

Gentlemen:

Enclosed is Check 2935 (\$150) submitted with your April 4, 1989 application for a source material license for the Sherwood Uranium Facility.

Under 10 CFR 170.11(b) 1 of the Commissions regulations, a specific exemption from fees for the Spokane Tribe has been granted. Since the tribe is organized as a governmental entity and recognized as such by the Department of Interior, the Commission has determined that this exemption is authorized by law and in the public interest.

Sincerely,

Signed by:

C. James Holloway, Jr.

C. James Holloway, Chief  
License Fee Management Branch  
Division of Accounting and Finance  
Office of the Controller

Enclosure:

- 1. Check 2935 (\$150)
- 2. Part 170

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