



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

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August 30, 1989

Jim Holloway:

I have reviewed the revised draft of the proposed rule that would amend 10 CFR Part 170 concerning fees charged to radioisotope licensees and for the submittal of topical reports. I have indicated a few editorial comments and corrections on the enclosed mark-up. The changes made in the draft proposed rule do not affect the original concurrence of the Office of Administration.

Michael T. Lesar

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For: The Commissioners

From: James M. Taylor
Acting 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 rule which amended its regulations by revising its fee schedules contained in 10 CFR Parts 170 and 171. One of the changes made to 10 CFR 170 was to eliminate the fee ceiling of \$20,000 previously established for topical reports. 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:

Since the Commission decision to remove the fee ceiling of \$20,000 on NRC review of topical reports, the number of topical reports submitted has significantly decreased. It appears that the principal reason for the reduction in the number of topical reports being submitted is the uncertain and potentially unlimited fee for NRC review of reports. This is counterproductive to the agency because, in many cases, the NRC gains significant benefit in terms of 1) the resolution of safety significant problems, and 2) staff time saved by conducting a generic review of a topical item thereby saving

FOR REVIEW

reports

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extensive plant-by-plant review in the same or similar areas. Examples of topical initiatives resulting in benefits to NRC are numerous. The recent B&W Owners Group decision to undertake a complete reassessment of all B&W reactor designs, thus eliminating a costly NRC review, saved time and produced a more highly competent technical review than would have been accomplished by NRC alone. Another example is the CE Owner's Group development of EP Guidelines for all of its units. This generic effort saves NRC costly review time assessing plant-by-plant guidelines. These are just two of many examples where the NRC has benefited from an industry undertaking to resolve an issue.

In many cases the NRC gains significant benefit from the submittal of topical reports. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource saving to the NRC, as well as the overall high level of technical competence available from industry, justifies NRC encouragement of industry submittal of these reports. On the other hand, removal of all fees does not appear to be in NRC's interest. Fees provide a screening mechanism to force those submitting topical reports to concentrate on issues which are most important. Additionally, the quality of reports is enhanced by the charging of fees for NRC review. ~~Since~~ industry must pay for both the research and writing of the report as well as the review by NRC, it is fair to assume that greater care and technical expertise is employed than if such reports carried no such fee for review.

Because)

Clearly a balance must be maintained between the need to encourage industry submittal of such reports and the need to cull out those of highest value to safety and benefit to NRC. The current system of charging a potentially unlimited fee for NRC review of these reports has an inhibiting effect on the industry. Overall, the benefits the NRC receives from those reports providing a resolution to safety problems has exceeded NRC's cost for this review.

The alternative approaches to this issue are as follows:

Alt. 1: Return to the prior system of providing a fixed maximum cost for review of topical reports. We recommend that \$50,000 should be the appropriate level ~~since~~ it represents an amount slightly higher than the mean of fees charged for review of topicals over \$20,000 in 1989. Exemptions could still be granted under 10 CFR 170.11(b)(1) on a case-by-case basis although significant benefit to the NRC must be shown.

because)

PRO: Provides a screening process for eliminating less important report submittals but ensures industry that they will not be severely harmed by submittal of those topicals which they feel are significant. Also provides the stability for projecting costs needed by industry.

Reports)

CON: Does not fully encourage submittal of all topicals, some of which may be of benefit to NRC but may be considered too costly by industry.

CON: MAY NOT RECOVER ALL OF THE COMMISSION'S COST FOR REVIEW OF THE REPORTS.

Alt. 2: Maintain existing system of charging full cost to all organizations submitting topical reports with fee exemptions granted on a case-by-case basis.

MAY FULLY RECOVER THE COMMISSION'S COST OF REVIEWING TOPICAL REPORTS.

PRO: ~~Fee levels will likely increase.~~ NRC can nonetheless exempt any fee depending on its relative benefit to the agency.

CON: Requires a heavy administrative burden on both program and administrative personnel to provide time-consuming determination of the "benefit" for every topical submitted. It appears that this alternative also invites requests for exemption from many submitters of topicals. Additionally, industry has limited planning stability for projecting the cost of NRC review. This substantially inhibits submittal of some potentially safety significant reports.

Report)

The staff favors adoption of Alternative 1. If adopted, those topical reports completed during the period of January 30, 1989, and the effective date of the rule would be subject to full cost recovery with no ceiling.

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) ~~re~~establish a ceiling of \$50,000 for all topical report reviews, (2) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs including the addition of a fee for byproduct material applications for decommissioning, (3) 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 (note that the December 1988 rule revision

did not apply the \$86-per-hour charge to the materials fee schedule, but retained the 1981 rate of \$58 per hour), (4) delete exemption provisions in 10 CFR 170.11(a)(3) and clarify (a)(4) and (a)(5) for ease of administration in collecting fees, (5) 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 (6) 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 materials 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 materials 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	420	+250	580	860	+ 48
Amendment	60	310	+417	120	350	+192
Routine Inspection	530	950	+ 79	480	860	+ 79
Nonroutine Inspection	530	950	+ 79	690	1,200	+ 74

The changes shown above are based on (1) the NRC's most recent licensing staff-time expenditure information (FY 1987/FY 1988) to process the actions received (for inspection fees, the staff recommends that the hours used in the current rule be maintained while they explore ways to unify the fee categories with the Regulatory Information Tracking System (RITS), inspection

categories and licensing program codes, and examine alternative means for setting and billing fees) 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. Changes of less than 64 percent indicate a decrease in the number of staff hours required to provide the requested services.

The proposed fees reflect the average cost to process actions for a particular type or category of materials license, e.g., industrial radiography. NMSS has recommended that the NRC continue collecting materials license fees as average or "flat fees" rather than the actual cost for each licensing action. The NMSS time reporting system does not record professional staff time per individual materials licensing action. Instead, professional staff time expended for the processing of materials licensing actions requested by specific licensees or potential licensees is recorded against a broad category of those licensees, e.g., medical institutions. Changes to this approach would add 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.

These fee changes will be noted by the Agreement States. Twenty-six of the 29 Agreement States charge fees and, while most base their fees on a certain percentage of cost recovery, several are legislatively required to charge fees that are identical or based on NRC fees. Even those States that set their own fees often must informally justify why they need to charge fees greater than NRC.

Coordination:

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

Recommendation:

That the Commission--

1. APPROVE THE ESTABLISHMENT OF A FEE CEILING FOR TYPICAL REPORTS (ACT-1).

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

3. 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.
- d. Public meetings will be held in Regions I and III to discuss the proposed changes and answer any questions.
- e. 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.).
- f. 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 51.22(c)(1)).
- g. The proposed rule would not have a significant economic impact on a substantial number of small licensees.
- h. The proposed rule is administrative and would assess fees for regulatory services provided by the NRC to radioisotope licensees. Accordingly, the backfit rule (10 CFR 50.109) does not apply to this proposed rule.

James M. Taylor
Acting Executive Director
for Operations

Enclosures:

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

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3. Draft Public Announcement

*See attached for previous concurrence.

OFC	: OC	: OC	: OC	: OC	: ADM	: NMSS	: NMSS
NAME	: GJackson*	: CJHolloway*	: EKBlack*	: GDJohnson*	: MLesar	: JFunches*	: JGlenn*
DATE	: 7/11/89	: 7/11/89	: 7/11/89	: 7/12/89	: / /89	: 7/21/89	: 7/25/89

OFC	: GPA	: OGC	: OC	: OC	: EDO	:	:
NAME	: VMiller*	: RFonner	: LHiller	: RMSCroggins	: JMTaylor	:	:
DATE	: 7/26/89	: / /89	: / /89	: / /89	: / /89	:	:

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Author's Name:

Document Comments:

Document Name:
STAFF PAPER/LICENSE FEES 2

Requestor's ID:
SHORTEN

Author's Name:
HOLLOWAY/JACKSON

Document Comments:
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN: 3150-AD23

Revision of Fee Schedules: Radioisotope Licensees

AGENCY: Nuclear Regulatory Commission.

Cond Topical Reports

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations governing licensing fees for all topical reports and licensing and inspection fees for radioisotope licenses (small programs covered by Parts 30, 40 and 70). The proposed amendments would (1) establish a ceiling of \$50,000 for topical report reviews, (2) update the schedule of fees for small radioisotope programs, including the addition of a fee for byproduct material applications for decommissioning, (3) change the cost per professional staff hour for all full-cost fees from \$86 to \$95 per hour based on the FY 1990 budget, (4) delete certain exemption provisions and clarify others for ease of administration, (5) add a new exemption provision to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (6) 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 proposed action is intended to more completely recover costs incurred by the Commission in providing services to identifiable recipients and to encourage the continued submission of topical reports.

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, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852 between 7:45 am and 4:15 pm (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.

The NRC will hold a public meeting on _____ in Region I at _____ pm, _____, King of Prussia, Pennsylvania, and a public meeting on _____ in Region III at _____ pm _____, Glen Ellyn, Illinois, to discuss the proposed changes and answer any questions.

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.

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 (53 FR 52632). In the response to comments 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 (53 FR 52633). 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 issued under 10 CFR Parts 30, 40 and 70 and for inspections of these licenses were last revised on May 21, 1984 (49 FR 21293). The 1984 revision was based on cost and professional staff hour data for fiscal year (FY) 1981. In the final rule 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 fees for materials licenses to more fully recover costs for application reviews and other services based on FY 1987 and FY 1988 licensing data. For inspection fees, the professional staff hours used in the 1984 rule to conduct an inspection have been maintained while the Commission explores ways to unify the fee categories with the Regional Information Tracking System (RITS) inspection categories and licensing program codes. Therefore the routine and nonroutine inspection fees have increased due to the change in the hourly rate only. 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. In addition, it is proposed that a fee ceiling be reestablished for all topical reports.

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

This section is revised to remove the paragraph designations for the definitions, arrange the definitions in alphabetical order, and add

definitions of "Indian organization" and "Indian tribe."

"Indian organization" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

Section 170.11 Exemptions

Paragraph (a)(3) is being removed 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 or 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)(4) is changed to include all licenses applied for by, or issued to, non-profit educational institutions, except power reactor licenses and materials licenses which authorize human use, commercial distribution, remunerated service to other persons or activities performed under a government agency contract. 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 of 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 Pub. L. 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.

Paragraph (a)(5) is changed, for clarification, 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 recognized as separate political entities similar to State governments. The Commission intends to exempt Indian tribes and wholly owned tribal commercial organizations conducting licensed activities on tribal lands from license fees in the same manner as it does States and governmental 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 \$166.8 thousand per FTE (professional staff year). For FY 1990, the budgeted obligations by direct program are: (1) Salaries and Benefits, \$196.4 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 I). 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 ¹
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

¹ 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 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 (53 FR 52639) 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 \$166.8 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 (\$296.66 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 OMB Circular A-76, "Performance of Commercial Activities."

For subsequent fiscal years the professional staff-hour rate will be revised, as needed, using the same methodology to arrive at a new hourly rate as described above. Any changes in the staff-hour rate for future fiscal years will be published in the Federal Register prior to the beginning of the fiscal year for which they will become effective.

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

Since the Commission decision (53 FR 52633) to remove the fee ceiling for topical reports reviews, the number of topical reports submitted for review has significantly decreased. It appears that the principal reason for the reduction in topical reports being submitted is the uncertain and potentially unlimited fee for NRC review of reports. This is counterproductive to the agency because, in many cases, the NRC gains significant benefit in terms of 1) the resolution of safety significant problems, and 2) the staff time saved by conducting a generic review of a topical item thereby saving extensive plant-by-plant review in the same or similar areas. Examples of topical initiatives resulting in benefits to NRC are numerous. The recent B&W Owners Group decision to undertake a complete reassessment of all B&W reactor designs, thus eliminating a costly NRC review, saved time and produced a more highly

December 29, 1988

Reports

competent technical review than would have been accomplished by NRC alone. Another example is the CE Owner's Group development of EP Guidelines for all of its units. This generic effort saves NRC costly review time assessing plant-by-plant guidelines. These are just two of many examples where the NRC has benefited from an industry undertaking to resolve an issue. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource saving to the NRC, as well as the overall high level of technical competence available from industry, justifies NRC encouragement of industry submittal of these reports.

Clearly a balance must be maintained between the need to encourage industry submittal of ~~such~~ ^{these} reports and the need to assess fees to ~~recover~~ ^{recovered} the costs for the review of these reports. The current system of charging a fee with no ceiling for NRC review of these reports appears to have had an inhibiting effect on the industry. As a result, the Commission is proposing to amend 10 CFR 170.21, Category J, Special Projects, to provide that the maximum fee for review of a topical report and any amendments, revisions, or supplements to topical reports shall not exceed \$50,000.

The professional hourly rate assessed for the services provided under the schedule is revised as shown in §170.20. Footnote 2 of §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 January 30, 1989 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. After the effective date of this^e final rule, the fees shown in the^{'s} proposed rule 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 revision, and to supporting information provided by the Office of Nuclear Material 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, 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 to the fees in the new category in addition to the fees in Category 7C.

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.

Fee Category 12, Special Projects, is revised to provide that the maximum fee for review of a topical report and any amendments, revisions or supplements to topical reports shall not exceed \$50,000.

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 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.).

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. There is no annual record-keeping burden imposed by the proposed rule.

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 materials 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.

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 - 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. 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, remove the paragraph designations for the definitions, arrange the definitions in alphabetical order, and add definitions of "Indian organization" and "Indian tribe" to read as follows:

§ 170.3 Definitions.

* * * * *

"Indian organization" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe.

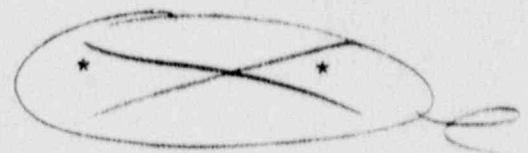
"Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Secretary of the Interior because of their status as Indians.

* * * * *

3. In § 170.11, paragraph (a)(3) is removed; paragraphs (a)(4) and (a)(5) are revised and paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *



(3) [Reserved]



(4) A construction permit or license applied for by, or issued to, a non-profit educational institution for 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) remunerated 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.

(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.

* * * * *

(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 an Indian organization conducting licensed activities on tribal lands.

* * * * *

4. In §170.12, paragraphs (a), (b), (c), (d) and (h) 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 will not be processed

and 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 paragraph (b)(3) of this section, 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. 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 paragraph (d)(4) of this section. 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 the full cost of the review 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~~ ^{must} 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, e.g., bills of \$5,000 or more will normally indicate payment by electronic fund transfer.

* * * * *

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. Subsequent changes to this rate will be published in the Federal Register prior to the fiscal year for which a new professional staff-hour rate is effective.

6. In Section 170.21, Category J, Special Projects and 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.

* * * * *

J. Special projects

Approvals:

- 1. Topical reports \$50,000
- 2. Amendments, revisions and supplements to topical reports \$50,000
- 3. All other approvals, special projects and reports except those specified in 1 and 2 above Full Cost

* * * * *

²Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the

full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of 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 any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings since January 29, 1989, will be assessed at the applicable 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 fees¹

Fee^{2,3}

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	\$ 420
Amendment	\$ 310
Inspections:	
Routine	\$ 380
Nonroutine	\$1,100

- 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	\$ 570
Nonroutine	\$ 670

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	\$ 240
Nonroutine	\$ 290

C. All other source material licenses:

Application - New license	\$ 660
Renewal	\$ 630
Amendment	\$ 370
Inspections:	
Routine	\$ 670
Nonroutine	\$1,200

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	\$1,700
Nonroutine	\$1,800

- 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	\$ 860
Nonroutine	\$1,600

- 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	\$ 3&0
Inspections:	
Routine	\$1,100
Nonroutine	\$1,500

- 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	\$ 670
Nonroutine	\$ 950

- 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	\$ 380
Nonroutine	\$ 570

- 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	\$ 480
Nonroutine	\$1,000

- 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	\$ 860
Nonroutine	\$1,100

- 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	\$ 570
Nonroutine	\$ 570

- 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	\$ 380
Nonroutine	\$ 570

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	\$ 570
Nonroutine	\$ 570

- 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	\$ 570
Nonroutine	\$ 570

- 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	\$ 760
Nonroutine	\$ 950

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	\$ 930
Amendment	\$ 520

Inspections:

Routine	\$ 670
Nonroutine	\$ 760

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	\$ 570

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	\$ 950
Nonroutine	\$2,100

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

Application - New license	\$ 420
Renewal	\$ 420
Amendment	\$ 310
Inspections:	
Routine	\$ 950
Nonroutine	\$ 950

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	\$ 130
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	\$1,800
Nonroutine	\$1,300

- 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	\$1,300
Nonroutine	\$1,700

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	\$ 670
Nonroutine	\$ 670

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

Application	\$ 150
License, renewal, amendment	Full Cost
Inspections:	
Routine	\$ 570
Nonroutine	\$ 860

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	\$ 950
Nonroutine	\$1,500

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	\$ 950
Nonroutine	\$1,500

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	\$1,300
Nonroutine	\$1,400

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	\$ 860
Amendment	\$ 350
Inspections:	
Routine	\$ 860
Nonroutine	\$1,200

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	\$ 570
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	\$ 190
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:	
1. Topical reports	\$50,000
2. Amendments, revisions and supplements to topical reports	\$50,000
3. All other approvals, special reports and reports except those specified in 1 and 2 above	Full Cost
<i>Inspections</i>	<i>None</i>

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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

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, 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 sealed source and device evaluations as shown in Categories 9A through 9D.

³ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of 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 staff-hours expended since January 29, 1989 and/or on or after the effective date of this rule will be assessed at the applicable rate established by § 170.20 of this part. In no event will the total review cost 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.

Dated at Rockville, Maryland, this ____ th day of ____ 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

DRAFT

Enclosure 2

The Honorable John B. Breaux, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In December 1988, the Commission published a final rule which amended its regulations by revising the fee schedules contained in 10 CFR 170 and 171. The revised schedules were adopted to permit the Commission to more fully recover its costs for identifiable services and to implement Section 5601 of the Omnibus Budget Reconciliation Act of 1987. At that time, the Commission indicated in the final rule that a rulemaking to update the fees for radioisotope licenses (small programs covered by 10 CFR Parts 30, 40 and 70) and for inspection of these programs would commence in 1989. We are now proposing to amend 10 CFR 170.31 to accomplish this.

(1) ESTABLISH A CEILING OF \$5,000 FOR TRIP, MATERIAL, REAGENT REVIEWS,

The proposed amendments would (1) update the schedule of fees in 10 CFR 170.31 for small radioisotope programs including the addition of a fee for 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)(4) and (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.

Enclosed is a copy of the Notice of Proposed Rulemaking which is being transmitted to the Office of the Federal Register for publication. This notice provides 30 days after publication for public comments.

Sincerely,

Ronald M. Scroggins
Controller

cc w/enclosure:
Senator Alan K. Simpson
LFMB Congressional File
Regulatory Records
PUR
EDO
OC
DAF
RScroggins, OC
LHiller, OC
GJohnson, DAF
EBlack, DAF
CJHolloway, LFMB
Secy
RSmith, OGC
RMDiggs, LFMB
GJackson, LFMB

NRC PROPOSES AMENDMENTS TO LICENSING FEES

The Nuclear Regulatory Commission is considering amending its regulations to revise ^{TYPICAL REPORT FEES AND} licensing and inspection fees for radioactive materials licensees. The revised fees would allow the Commission to more completely recover the costs incurred in providing services ^{FOR SMALL LICENSEE PROGRAMS.}

As proposed, the amendments would update the fee schedule for small ^{ESTABLISH A FEE CEILING OF \$2,000 FOR THE REVIEW OF TYPICAL REPORTS AND WOULD} programs using radioactive materials and add a fee for reviewing applications for decommissioning by certain materials licensees. The proposals are based on Fiscal Year 1987 and 1988 licensing data, and on a change in the cost per NRC professional staff hour from \$86 to \$95 based on the agency's Fiscal Year 1990 budget. Indian tribes and Indian organizations would be made exempt from the payment of fees, as states and government agencies currently are.

NRC charges fees to recover its costs for providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fees are authorized by the Independent Offices Appropriation Act of 1952.

The proposed fee changes apply to radioactive material licenses issued under Parts 30, 40 and 70 of the Commission's regulations. Fees for these licenses and for inspections of these licensees were last revised on May 21, 1984. The amendments would not apply to nuclear power plant licensees, for which fee schedules were revised on December 29, 1988.

DRAFT

The proposed amendments, which are to Part 170 of the Commission's regulations, are described in detail in a Federal Register notice published on _____ . Interested persons are invited to submit written comment by _____ to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

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89091 40078 XA

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

September 1, 1989

MEMORANDUM FOR: Ronald Scroggins, Controller
Office of the Controller

FROM: Frank Gillespie, Director
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

SUBJECT: LICENSE FEE EXEMPTION FOR TOPICAL REPORTS

Based on our discussion on August 25, 1989, I understand that your staff is working on some revisions to 10 CFR Part 170 which could be coordinated with our initiatives to reinstate a fee cap for all topical report reviews conducted by NRC.

We concur in your suggestion to combine these two activities and enclose for your information a draft of a proposed SECY paper we were developing. Since your efforts can accommodate our goals, we will not proceed with this paper.

We would appreciate an opportunity to comment on your proposed revision to 10 CFR Part 170 prior to finalization. If you would like to discuss this matter further, please contact Ron Villafranco at 492-1201.

Frank Gillespie, Director
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

Enclosure:
Draft SECY Paper

cc: J. Holloway, Jr., OC/LFMB
Graham Johnson, OC/DAF

~~89091 40078~~ XA 7pp

DRAFT

MEMORANDUM FOR: The Commissioners

FROM: Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

SUBJECT: PROPOSED REVISION TO 10 CFR PART 170 - FEES FOR TOPICAL REPORTS

PURPOSE: To obtain Commission approval of a proposed rule change to Part 170 to adjust license fee billing procedures for NRC review of topical reports.

CATEGORY: This paper covers a policy decision on fees charged for NRC review of topical reports submitted by industry.

ISSUE: Whether NRC policy covering the billing of fees for NRC review of topical reports should be changed to reinstate a fee cap for this review.

BACKGROUND: Effective January 30, 1989 the Commission voted to remove a previously existing ceiling of \$20,000 on fees chargeable for NRC review of topical reports but stated that, "there may be some topical reports that are of particular importance and use to the NRC. Therefore, as a matter of agency policy, the NRC may upon its own initiative or at the request of the applicant, exempt all or part of the topical report fee pursuant to §170.11 (b) (1)."

CONTACT:

Ron Villafranco, PRAS

x21201

DISCUSSION:

Since the January 30, 1989 Commission decision to remove the fee cap of \$20,000 on NRC review of topical reports, the number of topicals submitted has been significantly decreased. The principle reason for the reduction in topicals being submitted is the uncertain and potentially unlimited fee for NRC review of reports. This is counterproductive to the agency because in many cases, the NRC gains significant benefit both in terms of the resolution of safety significant problems and also in terms of staff time saved by conducting a generic review of a topical item and thus saving extensive plant by plant review in the same or similar areas. Examples of topical initiatives resulting in benefits to NRC are numerous. The recent B&W Owners Group decision to undertake a complete reassessment of all B&W reactor designs, thus eliminating a costly NRC review, saved time and produced a more highly competent technical review than would have been accomplished by NRC alone. Another example is the CE Owner's Group development of EP Guidelines for all of its units. This generic effort saved NRC costly review time assessing plant by plant guidelines. These are just two of many examples where the NRC has benefited from an Owners Group undertaking to resolve an issue.

The fee exemption policy is good, particularly if an initiative by an Owner's Group will have significant benefit to the agency and safety significance. Established criteria are necessary and the criteria which should be used to determine whether a fee is to be exempt are:

- Is the report of safety significant benefit primarily to NRC more so than the licensees,
- Is the report in response to an NRC required directive or regulation,
- Is the report of generic benefit to a variety of utilities thus saving NRC review of duplicate reports on a plant by plant basis.

In many cases the NRC gains significant benefit from the submittal of topical reports. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource saving to the NRC, as well as the overall high level of technical competence available from industry, justifies NRC encouragement of industry submittal of these reports.

On the other hand, removal of all fees does not appear to be in NRC's interest. Fees provide a screening mechanism to force those submitting topical reports to concentrate on issues which are most important. Additionally, the quality of reports is enhanced by the charging of fees for NRC review. Since industry must pay for both the research and writing of the report as well as the review by NRC it is fair to assume that greater care and technical expertise is employed, than if such reports carried no such fee for review.

Clearly a balance must be maintained between the need to encourage industry submittal of such reports and the need to cull out those of highest value to safety and benefit to NRC. The current system of charging a potentially unlimited fee for NRC review of these reports has a inhibiting effect on the industry. Overall the benefits the NRC receives from those reports providing a resolution to safety problems has exceeded NRC's cost for this review.

The alternative approaches to this issue are as follows:

Alternative 1: Return to the prior system of providing a fixed maximum cost for review of topical reports. We recommend that \$45,000 should be the appropriate level since it represents an amount slightly higher than the median level of fee's charged for review of topicals over \$20,000 in 1989. Exemptions would still be allowed on a case-by-case basis using the criteria set forth earlier.

PROS: Provides a screening process for eliminating less important report submittals but ensures industry that they will not be severely harmed by submittal of those topicals which they feel are significant. Also provides the stability for projecting costs needed by industry.

CONS:

Does not fully encourage submittal of all topical, some of which may be of benefit to NRC but may be considered too costly by industry.

Alternative 2:

Maintain existing system of charging full cost to all organizations submitting topical reports with fee exemptions granted on a case by case basis.

PROS

Fee levels will likely increase. NRC can nonetheless exempt any fee depending on its relative benefit to the agency.

CONS

Requires a time consuming determination by the NRC of the "benefit" for every topical submitted. Industry has no planning stability for projecting the cost of NRC review. Substantially inhibits submittal of some potentially safety significant reports.

Alternative 3:

Provide for a \$45,000 cap for all topicals. However, if the the topical is such that by its generic nature it saves the NRC from conducting multiple reviews, a further \$2,000 would be deducted from the fee for each reactor site which agrees to implement the recommendations in accordance with the applicable SER.

PROS

Provides further incentive for industry to submit safety significant topical reports and stability for cost projections but inhibits such groups from submitting topicals of marginal or no value to NRC.

CONS

Complicated and time consuming to implement. Each topical requires a case by case determination of where it fits in the fee structure. Industry will still not have any clearly defined amount to anticipate paying for NRC review of topicals and thus many be reluctant to submit such reports for NRC review.

RECOMMENDATIONS:

That the Commission:

1. Proceed with rulemaking change to 10 CFR Part 170 based on Alternative 1. Charge a \$45,000 fee cap for review of all topical reports but allow for exemptions on a case-by-case basis.
2. Provide no retroactive review of fees charged from January 30, 1989 until implementation of this change.

SCHEDULING:

This paper should be scheduled at an open session. Commission action is requested as soon as possible since the backlog of fee exemption requests is growing.



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

AD 23-1
TDR

SEP 11 1989

891201053 89/11/29

NOTE TO: Jim Holloway
FROM: Glenda Jackson
SUBJECT: NMSS' RECOMMENDATION FOR STAFF-HOURS FOR FEE CATEGORY 3I

As you know, the staff-hour data supplied by NMSS in March 1989 reflects an average of 14 hours for fee Category 3I amendments for FY87 and FY88. However, NMSS recommended that we use 3 hours in revised 10 CFR 170 due to "data anomaly due to 3M case." John Glenn agrees that the staff-hours shown for 3I amendments should be decreased from 14 to 3.

Glenda Jackson
Glenda Jackson

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

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AD 23-1
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SEP 15 1989

89/11/29

NOTE TO: Jim Holloway
FROM: Glenda Jackson
SUBJECT: FEES FOR CALIBRATION/LEAK TEST/OTHER SERVICES (CATEGORIES 3N AND 3P)
AND HUMAN AND NON-HUMAN USE OF LIXI SCOPE DEVICES

On May 18, 1989, I discussed the subject fees with John Glenn, NMSS. The discussion for Categories 3N and 3P was based on Stan Huber Consultants' December 18, 1985 letter; Vandy Miller's March 19, 1985 memorandum to William O. Miller; John Surmeier's April 10, 1987 memorandum to Ron Smith; Health Physics Associates' July 22, 1988 comment on the June 27, 1988 proposed rule; and Vandy Miller's September 30, 1988 memorandum. Copies of these documents are attached. John confirmed that it is appropriate to treat calibration service the same as leak test service for fee purposes and recommended this change be included in revised Part 170.

The discussion on the medical versus non-medical use of the Lixiscope was based on a comment from Lixi, Inc. concerning the June 22, 1988 proposed rule and Vandy Miller's September 30, 1988 response. John Glenn stated that although the review effort may be the same for medical and industrial uses of the Lixiscope, the same could be said for all diagnostic sealed sources; however, it would not be reasonable to make a separate category for each manufactured item or for each individual use of an item. John believes that these licenses are currently grouped in the most logical manner. John recommended that the current fee categories be retained for the human and non-human use of diagnostic devices.

Sincerely,

Glenda Jackson
Glenda Jackson, Chief
Materials License Fee Section
License Fee and Debt
Collection Branch, OC/DAF

Attachments:
As Stated

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