

# American Airlines

MAINTENANCE & ENGINEERING CENTER

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(54 FR 49763)

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1/16/90 SECRETARY

Secretary, U.S. Nuclear Regulatory Commission  
Attn: Docketing and Service Branch  
Washington, DC 20555

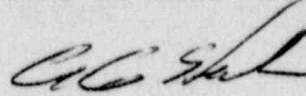
Subject: Revision of Fee Schedules, 10 CFR Part 170

While it is understandable that fees must continue to be increased to reflect higher cost of government, some reasonable limits must be established. Under the present program, a licensee can be charged for any number of Routine Inspections in a given year. The previous regulations allowed only one Routine Inspection fee per year. American Airlines received two routine inspections during 1989. The first inspection was a surprise visit in February and the second was the annual audit in August.

A typical example of excessive fee assessment:

In February, two inspectors from Region IV made a surprise visit to American Airlines, Tulsa Facility. They requested to observe an Isotope Inspection, if any were being accomplished. No inspections were being accomplished, so they left. They were on the premises approximately one hour. We were billed (\$530) for a Routine Inspection. Other NDT facilities within the Tulsa area have received similar inspections.

In summary, we can accept higher fees, made necessary to support the industrial radiography inspection program, however, some restraints must be established to prevent excessive inspections. American Airlines feels it's unacceptable to be charged an inspection fee any time an inspector chooses to visit our facility.



A.A. Hale  
Vice President, Engineering

cc: J.E. Martin  
C.H. Eads  
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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

IMPORTANT NOTICE

December 1, 1989

TO: ALL PARTS 30, 40, 50, 61, 70, 71, 72, and 73 LICENSEES,  
APPLICANTS AND REACTOR VENDORS

SUBJECT: PROPOSED REVISIONS TO 10 CFR 170 ON LICENSE FEES

Gentlemen:

On December 1, 1989 the U.S. Nuclear Regulatory Commission published in the Federal Register (54 FR 49763) for public comment the enclosed Notice of Proposed Rulemaking. This notice proposes revisions to the fee requirements of 10 CFR 170 ("Fees for Facilities and Materials Licenses and other Regulatory Services ....."). These revisions are being made to update the current materials license and inspection fees and the cost per professional staff-hour which is assessed for those reviews based on the full cost method.

Comments should be submitted by January 30, 1990. The NRC staff will hold a public meeting in Region I at 1:00 pm, January 8, 1990, Sheraton-Radisson Hotel, Erie Room, 1200 First Avenue, King of Prussia, Pennsylvania and a public meeting in Region III at 1:00 pm, January 11, 1990, Holiday Inn, 5540 North River Road, Rosemont, Illinois to discuss the proposed changes and to answer any questions.

The major changes proposed to Part 170 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 per hour to \$95 per hour.
3. Establish a ceiling of \$50,000 for Topical Report Reviews.
4. Delete the exemption provisions in 170.11(a)(3), broaden the exemption in 170.11(a)(4) and clarify the exemption in 170.11(a)(5).
5. Add a new exemption provision in 170.11(a)(11) to provide that Indian tribes and Indian organizations that are federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from payment of fees.
6. Revise 10 CFR 170.12(h) to request that bills in excess of \$5,000 be paid by electronic fund transfer.

All parties desiring to submit written comments for consideration should send them to the Secretary of the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Questions relating to the proposed revision should be directed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Office of the Controller.

Sincerely,

*for Lee Heller*  
Ronald M. Scroggins  
Office of the Controller

Enclosure:  
Federal Register Notice

# Proposed Rules

Federal Register

Vol. 54, No. 230

Friday, December 1, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 170

RIN 3150-AD23

#### Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

**AGENCY:** Nuclear Regulatory Commission.

**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 submittal of topical reports.

**DATES:** The comment period expires January 30, 1990. 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 January 8, 1990 in Region I at 1:00 pm, Sheraton-Radisson Hotel, Erie Room, 1200 First Avenue, King of Prussia, Pennsylvania, and a public meeting on January 11, 1990 in Region III at 1:00 pm, Holiday Inn, 5440 North River Road, Rosemont, 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. Subject terms

#### 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 NCR 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 Regulatory 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. (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.) 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, part 170, Code of Federal Regulations.

##### 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 part 30, 40, 70, or 71 that are considered to be incidental to operation of a nuclear reactor will be charged under 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 license 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 170.31 rather than § 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 170.31.

Paragraph (a)(4) is changed to broaden the exemption for non-profit educational institutions to include certain activities (e.g., research) not covered by the current exemption. It would not include power reactor licenses and materials licenses which authorize human use, commercial distribution, or remunerated service to other persons or activities performed under a government contract. If a non-profit educational institution provides services to other persons without charge, the exemption would apply. The Commission has received several fee exemption requests from colleges and universities for licensed activities not covered by the current exemption. Additionally, this change is in keeping with the concern of Congress regarding the impact of the current schedule on some entities and their limited ability to pass through the costs of these charges to the ultimate consumer. Although the legislative history for annual fees contained in part 171 of this chapter discusses the option of considering modifications to these fee schedules for

hospitals, research and medical institutions and uranium producers, the Commission is continuing to limit this particular exemption to non-profit educational institutions.

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 were 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, \$97.95 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 <sup>1</sup>
NRR/SP.....	962.2
RESEARCH.....	155.0
NMSS.....	307.5
AEOD.....	93.1
ASLAP/ASLBP.....	22.2
ACRS.....	25.0
OGC.....	33.0
<b>Total Direct FTE.....</b>	<b>1,618.0</b>

<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 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 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.....	12.31
<b>Total nonprogram support obligations.....</b>	<b>296.66</b>

TABLE II.—FY 1990 BUDGET BY MAJOR CATEGORY—Continued

(\$ in Millions)	
Program support.....	178.34
Total budget.....	475.0

The Direct FTE Productive Hourly Rate (\$95/hour rounded to the nearest whole dollar) 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; December 29, 1988) 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 these reports. This is counterproductive to the agency because, in many cases, the regulatory effort 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 beneficial topical initiatives 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 complete technical review than could 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 public interest is served by an industry undertaking to resolve an issue. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource savings 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.

In conclusion, a balance must be maintained between the need to encourage industry submittal of these reports and the need to assess fees for the costs of reviewing the 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 shall not exceed \$50,000 and any amendments, revisions, or supplements to topical reports shall not exceed \$50,000. This figure represents an adjustment of a previous ceiling of \$20,000 to reflect the effects of inflation and is an amount which approximates the median of topical report fees charged over \$20,000 thus far in 1989.

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 on or 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 final rule, the fees shown in this 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) (32 U.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 Associations 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 part 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 recordkeeping 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 it because these amendments do not require the modification of or addition to systems, structures, components or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

#### List of Subjects in 10 CFR 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. 533, 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 (42 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 and reserved; 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 (i) human use; (ii) remunerated services to other persons; (iii) distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; and (iv) 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 part 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 paragraphs (d)(3) and (d)(4) of this section, 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 licenses, 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 § 170.21, Category J, Special Projects and Footnote 2 to the schedule are 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

\* 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 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. 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>
<b>1. Special nuclear material:</b>	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or ore 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.
E. 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 <sup>4</sup> :	
Application—New license .....	42c.
Renewal .....	\$420.
Amendment .....	\$310.
Inspections:	
Routine .....	\$380.
Nonroutine .....	\$1,100.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material <sup>1</sup> unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: <sup>5</sup>	
Application—New license .....	\$570.
Renewal .....	\$570.
Amendment .....	\$190.
Inspections:	
Routine .....	\$570.
Nonroutine .....	\$670.
<b>2. Source material:</b>	
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.

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
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)(B):	
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.
<b>3. Byproduct material:</b>	
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 <sup>3</sup> :	
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 <sup>3</sup> :	
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 .....	\$380.
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.

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

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

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
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:	
Routine	\$950.
Nonroutine	\$2,100.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	\$420.
Renewal	\$420.
Amendment	\$310.
Inspections: <sup>3</sup>	
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	\$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	\$1,800.
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.

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Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>	Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>	Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
<b>5. Well logging:</b>		Inspections:		3. All other approvals, special reports and reports except those specified in 1 and 2 above.	Full Cost.
A. Licenses specifically authorizing use of byproduct material, source material, or special nuclear material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:		Routine.....	\$860.	Inspections.....	None.
Application—New license.....	\$2,800.	Nonroutine.....	\$1,200.		
Renewal.....	\$1,700.	<b>8. Civil defense:</b>		<b>13.</b>	
Amendment.....	\$450.	A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:		A. Spent fuel storage cask Certificate of Compliance:	
Inspections:		Application—New license.....	\$480.	Application.....	\$150.
Routine.....	\$670.	Renewal.....	\$330.	Approvals.....	Full Cost.
Nonroutine.....	\$670.	Amendment.....	\$260.	Amendments, revisions and supplements.....	Full Cost.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:		Inspections:		Reapproval.....	Full Cost.
Application.....	\$150.	Routine.....	\$570.		
License, renewal, amendment.....	Full Cost.	Nonroutine.....	\$570.	B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Inspections:		<b>9. Device, product or sealed source safety evaluation:</b>		Routine.....	Full Cost.
Routine.....	\$570.	A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:		Nonroutine.....	Full Cost.
Nonroutine.....	\$860.	Application—each device.....	\$2,700.		
<b>6. Nuclear laundries:</b>		Amendment—each device.....	\$950.	C. Inspections related to storage of spent fuel under § 72.210 of part 72 of this chapter:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:		Inspections.....	None.	Routine.....	Full Cost.
Application—New license.....	\$1,100.	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:		Nonroutine.....	Full Cost.
Renewal.....	\$1,100.	Application—each device.....	\$1,300.		
Amendment.....	\$290.	Amendment—each device.....	\$480.	<b>14. Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72:</b>	
Inspections:		Inspections.....	None.	Application.....	\$150.
Routine.....	\$950.	C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:		Approval, Renewal, Amendment.....	Full Cost.
Nonroutine.....	\$1,500.	Application—each source.....	\$570.	Inspection:	
<b>7. Human use of byproduct, source, or special nuclear material:</b>		Amendment—each source.....	\$190.	Routine.....	Full Cost.
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:		Inspections.....	None.	Nonroutine.....	Full Cost.
Application—New license.....	\$2,700.	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:			
Renewal.....	\$660.	Application—each source.....	\$290.		
Amendment.....	\$350.	Amendment—each source.....	\$100.		
Inspections:		Inspections.....	None.		
Routine.....	\$950.	<b>10. Transportation of radioactive material:</b>			
Nonroutine.....	\$1,500.	A. Evaluation of casks, packages, and shipping containers:			
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.....	\$150.		
Application—New license.....	\$1,900.	Approval, Renewal, Amendment.....	Full Cost.		
Renewal.....	\$1,600.	Inspections.....	None.		
Amendment.....	\$300.	B. Evaluation of part 71 quality assurance programs:			
Inspections:		Application-Approval.....	\$190.		
Routine.....	\$1,300.	Renewal.....	190.		
Nonroutine.....	\$1,400.	Amendment.....	190.		
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:		Inspections.....	None.		
Application—New license.....	\$590.	<b>11. Review of standardized spent fuel facilities:</b>			
Renewal.....	\$860.	Application.....	\$150.		
Amendment.....	\$350.	Approval, Renewal, Amendment.....	Full Cost.		
		Inspections.....	None.		
		<b>12. Special projects:</b>			
		Application.....	\$150.		
		Approval:			
		1. Topical reports.....	\$50,000.		
		2. Amendments, revisions and supplements to topical reports.....	\$50,000.		

<sup>1</sup> 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, 13A 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/reapproval 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, 13A 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 fee for each license affected. An application for an amendment, 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, 11, 12, 13A 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.

An application 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 § 170.29 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.

<sup>2</sup> 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.

<sup>3</sup> 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 costs be less than the application fee.

<sup>4</sup> 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.

<sup>5</sup> 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 27th day of November 1989.

For the Nuclear Regulatory Commission,  
Samuel J. Chilk,  
Secretary of the Commission.

[FR Doc. 89-28157 Filed 11-30-89; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

(Docket No. 89-CE-32-AD)

#### Airworthiness Directives; Fairchild Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Fairchild SA226 and SA227 series airplanes, requiring inspection and rework as necessary of the main landing gear door to nacelle skin to assure proper clearance. The proposed AD is prompted by several wheels-up landings caused by the main landing gear doors jamming against the nacelle which prevents extension of the main landing gear. The proposed actions will correct this unsafe condition.

**DATES:** Comments must be received on or before January 16, 1990.

**ADDRESSES:** Fairchild Service Bulletin Nos. SA226-32-055 and SA227-32-027, both dated December 8, 1988, applicable to this AD, may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** James R. Bannister, Airplane Certification Office, FAA Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5163.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments

specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

##### Discussion

The FAA has determined that a safety of flight condition exists on Fairchild SA226 and SA227 series airplanes. Several accidents have occurred in which the main landing gear would not extend and the airplane was forced to land "wheels up". Five of the accidents were attributed to the landing gear doors becoming jammed against the nacelle skin thus preventing extension of the landing gear.

Since the condition described is likely to exist or develop in other Fairchild SA226 and SA227 series airplanes of the same design, the proposed AD would require visual inspection and adjustment of the landing gear door to nacelle skin gap in accordance with Fairchild Service Bulletins 226-32-055 and 227-32-027, as applicable.

The FAA has determined there are approximately 656 airplanes affected by the proposed AD. The cost of the inspections and adjustments specified in the proposed AD is estimated to be \$300 per airplane. The total cost is estimated to be \$196,800. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism

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NUCLEAR REGULATORY COMMISSION  
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