

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150-AE99

Establishment of Revised
FY 1991 and FY 1992 Annual Fee Surcharges

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: On July 20, 1993 (58 FR 38666), the Nuclear Regulatory Commission ("NRC" or "Commission") published a final rule as a result of the U.S. Court of Appeals decision dated March 16, 1993. The final rule changed the method of allocating low-level waste costs for FY 1993 in response to the court's decision. In its FY 1993 final rule, the NRC indicated that it was adopting the FY 1993 approach for FY 1991 and FY 1992 and would separately publish a final rule revising the FY 1991 and FY 1992 surcharges. This final rule establishes those revised surcharges for NRC licensees for FY 1991 and FY 1992. The NRC will make refunds to certain materials licensees based on the amounts of the revised surcharges.

EFFECTIVE DATE: (immediately upon publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office

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PDR PR
171 58FR38666 PDR

of the Controller, U.S. Nuclear Regulatory Commission,
Washington, DC 20555, telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Final action - revised FY 1991 and FY 1992 annual fee surcharges.
- III. Administrative Procedure Act: Waiver.
- IV. Environmental Impact: Categorical Exclusion.
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- VII. Regulatory Flexibility Analysis.
- VIII. Backfit Analysis.

I. Background

On March 16, 1993, the U.S. Court of Appeals for the District of Columbia Circuit decided Allied-Signal, Inc., v. U.S. Nuclear Regulatory Commission and the United States of America, 988 F.2d 146 (D.C. Cir. 1993). The court questioned the NRC's decision to allocate generic costs associated with low-level waste (LLW) disposal by classes of licensees, rather than by individual licensee. The Court remanded only the FY 1991 rule; however, the FY 1992 rule raised identical questions and a challenge to that rule was subsequently remanded by the court.

In response to the Court's opinion, the NRC, in its final fee rule for FY 1993 published on July 20, 1993 (58 FR 38669),

changed its method of allocating LLW costs to NRC licensees after providing for notice and comment on four alternative methods of LLW cost allocation and possible variations of those alternatives. Based on the comments received, the NRC, for FY 1993, created two groups -- large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee. In its final FY 1993 rule, the NRC also adopted this approach for FY 1991 and FY 1992, indicating that it would publish separately final revised FY 1991 and FY 1992 surcharge schedules resulting from changes in the allocations of NRC LLW budgeted generic costs. This rulemaking notice completes agency action on the proposed rule issued for public comment on April 23, 1993 (58 FR 21662) and implements the ministerial calculations called for in the July 20, 1993 final rule.

The agency workpapers that support these final changes to 10 CFR Part 171 for FY 1991 and FY 1992 are available in the Public Document Room at 2120 L Street, NW, Washington, DC, in the lower level of the Gelman Building.

II. Final Action - Revised FY 1991 and 1992 fee surcharges

This final rule establishes the revised FY 1991 and FY 1992 surcharges for NRC licensees based on the allocation method of low-level waste costs described and used in the FY 1993 final

rule.

The revised method of allocation, described in detail in the FY 1993 final rule published on July 20, 1993 (58 FR 38669), allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities), and small generators (all other LLW-producing licensees). Waste generators in the large group are each expected to generate more than 1,000 cubic feet of LLW per year. The allocation of LLW costs to the two groups is based on the historical average amount of waste disposed by the two groups. The result is that 82 percent and 18 percent of the costs are allocated to the large and small generator groups, respectively. Within each of the two groups, all licensees pay the same LLW fee (surcharge).

The amounts of the surcharges for the two groups using the revised method for FY 1991 are shown in §§ 171.15(c)(3) and 171.16(f) of this final rule. For FY 1992, the amounts of the surcharges for the various fee categories using the FY 1993 method are shown in §§ 171.15(c)(4) and 171.16(g) of this final rule. The revised LLW surcharges for small generators of LLW are \$1,400 for FY 1991 and \$1,500 for FY 1992. The surcharge for FY 1991 is the same for small generators (\$1,400) as that assessed in FY 1991. For FY 1992, the LLW surcharge of \$1,500 is \$100 less than the \$1,600 paid by the small generators in FY 1992. The revised surcharges for large generators of LLW for FY 1991

and FY 1992 are \$62,300 and \$61,700, respectively. These surcharges are lower than the \$143,400 and \$155,100 paid in FY 1991 and FY 1992, respectively, by some large fuel facilities. Based on the FY 1993 LLW allocation method, the revised surcharges for FY 1991 and FY 1992 for operating power reactors and small fuel facilities (fee Category 1.A.(2)) are greater than those paid in FY 1991 and FY 1992. The increase will not be assessed because no additional charges established under this final rule (i.e., a later enacted rule) can be retroactively assessed due to applicable judicial precedent. However, refunds will be made for certain large generators because their fee burden is lower under the revised allocations. The amount of the refund for individual licensees will represent the difference between the amount paid under the previous rules and the revised amounts for FY 1991 and FY 1992. The NRC expects the refunds to the large generators to be made by June 30, 1994. For the approximately 1,000 small generators who paid a FY 1992 LLW surcharge, each will receive a \$100 credit on their FY 1994 bill for cost effectiveness reasons. The total amount of the refunds and credits for both fiscal years is estimated to be approximately \$2.2 million. If any entity no longer holds an NRC license, but is eligible for a refund or credit, it should write to the U. S. Nuclear Regulatory Commission, Office of the Controller, License Fee and Debt Collection Branch, Washington, DC 20555.

III. Administrative Procedure Act: Waiver

No additional charges will be assessed for FY 1991 and FY 1992; instead certain licensees are eligible to receive either refunds or credits based on the difference in the amount of the revised surcharges and the amounts initially paid in FY 1991 and FY 1992. To expedite the issuance of refunds and credits, the NRC has determined that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedures Act (5 U.S.C. 553(d)(3)). This final rule will therefore become effective immediately upon publication.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

V. Paperwork Reduction Act Statement

This final 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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law No. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). OBRA-90, as amended, requires that for FYs 1991 through 1998 approximately 100 percent of the NRC's budget authority be recovered through the assessment of fees. To accomplish this statutory requirement for FY 1991 and FY 1992, the NRC on July 10, 1991 (56 FR 31472), and on July 23, 1992 (57 FR 32691), in accordance with § 171.13, published in the Federal Register schedules of the FY 1991 and FY 1992 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies.

In FY 1991 and FY 1992, the NRC allocated low-level waste (LLW) costs by the amount of waste disposed per class of licensee, dividing the costs equally within each class. This method of cost allocation was challenged in court.

On March 16, 1993, the U.S. Court of Appeals for the District of Columbia Circuit decided Allied-Signal, Inc., v. U.S. Nuclear Regulatory Commission and the United States of America, 988 F.2d 146 (D.C. Cir. 1993). The court questioned the Commission's decision to allocate generic costs associated with

low-level waste (LLW) disposal by classes of licensees, rather than by individual licensees. The Court remanded only the FY 1991 rule; however, the FY 1992 rule raised identical questions. The same petitioners who challenged the FY 1991 rule in court also brought a judicial challenge to the FY 1992 rule.

In response to the court decision, the NRC in its proposed FY 1993 annual fee rule published on April 23, 1993 (58 FR 21662), requested comments on four alternative methods of LLW cost allocation and possible variations of those alternatives. A number of comments were received. There was no consensus among the commenters regarding a preferred option.

In response to the Court's directive, the NRC, in its final fee rule for FY 1993, published on July 20, 1993 (58 FR 38669), changed its method of allocating LLW costs to NRC licensees. The NRC, for FY 1993, created two groups -- large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee. In the final FY 1993 rule, the NRC also adopted this approach for FY 1991 and FY 1992, indicating that it would separately publish a final rule revising the FY 1991 and FY 1992 surcharges resulting from the changed allocation of NRC LLW budgeted generic costs. This final rule establishes the revised surcharges for FY 1991 and FY 1992.

VII. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule as adopted does not have a significant economic impact on a substantial number of small entities. This final rule establishes revised surcharges for FY 1991 and FY 1992. These revised surcharges will not impose new financial burdens on any class of licensees for FY 1991 and FY 1992. Rather, certain licensees will be eligible for either refunds or credits based on the differences between the amount of the revised surcharges and the amounts initially paid in FY 1991 and FY 1992.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions 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 171

Annual charges, Byproduct material, Holders of certificates, registrations, and approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC hereby adopts the following amendments to 10 CFR Part 171.

PART 171 - ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

1. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-

486, 106 Stat. 3125 (42 U.S.C. 2214 note).

2. In § 171.15, paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 171.15 Annual Fees: Reactor Operating Licenses

(c) ***

(3) The FY 1991 surcharge to be added to each operating power reactor is \$266,000. This amount is calculated by dividing the total cost for these activities (\$29.0 million) by the number of operating power reactors (109).

(4) The FY 1992 surcharge to be added to each operating power reactor is \$281,000. This amount is calculated by dividing the total cost for these activities (\$30.6 million) by the number of operating power reactors (109).

3. In § 171.16, paragraphs (f) and (g) are added to read as follows:

\$171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

(f) To recover FY 1991 costs relating to LLW disposal generic activities, an additional charge of \$62,300 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 5.B., 6.A., and 7.B., and an additional charge of \$21,000 has been added to fee Category 17. For comparative purposes the table below shows, for each materials fee category, the total surcharge assessed in FY 1991, the FY 1991 amended surcharges and the amount of overpayment resulting in a refund due or a credit given certain categories of materials licensees.

Schedule of Materials Annual Fee Surcharges

<u>Fee Category¹</u>	<u>FY 1991 Surcharge Assessed²</u>	<u>FY 1991 Amended Surcharge²</u>	<u>Amount of Overpayment</u>
<u>Special Nuclear Material</u>			
1.A. (1)	\$143,500	\$62,400	\$81,100
1.A. (2)	35,900	62,400	---
1.B	1,500	1,500	---
1.C.	100	100	---
1.D.	1,500	1,500	---
<u>Source Material</u>			
2.A. (1)	\$143,500	\$62,400	\$81,100
2.A. (2)	100	100	---
2.B.	100	100	---
2.C.	1,500	1,500	---
<u>Byproduct Material</u>			
3.A.	\$1,500	\$1,500	\$---
3.B.	1,500	1,500	---
3.C.	1,500	1,500	---
3.D.	100	100	---
3.E.	100	100	---
3.F.	100	100	---
3.G.	100	100	---
3.H.	100	100	---
3.I.	100	100	---
3.J.	100	100	---
3.K.	100	100	---
3.L.	1,500	1,500	---
3.M.	1,500	1,500	---
3.N.	1,500	1,500	---
3.O.	100	100	---
3.P.	100	100	---

¹A full description of the various fee categories is found in Part 171.16(d).

²Includes \$100 surcharge to recover costs not paid by small entities.

Waste Disposal and Processing

4.A.	\$35,900	1,500	\$34,400
4.B.	1,500	1,500	---
4.C.	1,500	1,500	---

Well Logging

5.A.	\$100	\$100	---
5.B.	1,500	1,500	---

Nuclear Laundries

6.A.	\$1,500	\$1,500	---
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Medical -- Human Use

7.A.	\$100	\$100	---
7.B.	1,500	1,500	---
7.C.	100	100	---

Civil Defense

8.A.	\$100	\$100	---
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Device/Sealed Source
Evaluation

9.A.	\$100	\$100	---
9.B.	100	100	---
9.C.	100	100	---
9.D.	100	100	---

Transportation

10.B.	\$100	\$100	---
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Spent Fuel Storage

13.B.	\$100	\$100	---
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Master Licenses

17	\$22,500	\$21,000	\$1,500
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(g) To recover FY 1992 costs relating to LLW disposal generic activities, an additional charge of \$61,700 has been added to fee

Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$1,500 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.N., 4.A., 4.B., 4.C., 5.B., 6.A., and 7.B., and an additional charge of \$23,100 has been added to fee Category 17. For comparative purposes the table below shows, for each materials fee category, the total surcharge assessed in FY 1992, the FY 1992 amendment surcharges and the amount of overpayment resulting in a refund due or a credit given for certain categories of materials licensees.

<u>Fee Category</u> ¹	<u>FY 1992 Surcharge Assessed</u> ²	<u>FY 1992 Amended Surcharge</u> ²	<u>Amount of Overpayment</u>
<u>Special Nuclear Material</u>			
1.A.(1)	\$155,250	\$61,850	\$93,400
1.A.(2)	38,950	61,850	---
1.B	1,750	1,650	100
1.C.	150	150	---
1.D.	1,750	1,650	100
<u>Source Material</u>			
2.A.(1)	\$155,250	\$61,850	\$93,400
2.A.(2)	150	150	---
2.B.	150	150	---
2.C.	1,750	1,650	100
<u>Byproduct Material</u>			
3.A.	\$1,750	\$1,650	\$100
3.B.	1,750	1,650	100
3.C.	1,750	1,650	100
3.D.	150	150	---
3.E.	150	150	---
3.F.	150	150	---

¹A full description of the various fee categories is found in Part 171.16(d).

²Includes \$150 surcharge to recover costs not paid by small entities.

3.G.	150	150	---
3.H.	150	150	---
3.I.	150	150	---
3.J.	150	150	---
3.K.	150	150	---
3.L.	1,750	1,650	100
3.M.	1,750	1,650	100
3.N.	1,750	1,650	100
3.O.	150	150	---
3.P.	150	150	---

Waste Disposal and Processing

4.A.	\$38,950	\$1,650	\$37,300
4.B.	1,750	1,650	100
4.C.	1,750	1,650	100

Well Logging

5.A.	\$150	\$150	---
5.B.	1,750	1,650	100

Nuclear Laundries

6.A.	\$1,750	\$1,650	\$100
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Medical -- Human Use

7.A.	\$150	\$150	---
7.B.	1,750	1,650	100
7.C.	150	150	---

Civil Defense

8.A.	\$150	\$150	---
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Device/Sealed Source
Evaluation

9.A.	\$150	\$150	---
9.B.	150	150	---
9.C.	150	150	---
9.D.	150	150	---

Transportation

10.B.	\$150	\$150	---
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Spent Fuel Storage

13.B.	\$150	\$150	---
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Master Licenses

17

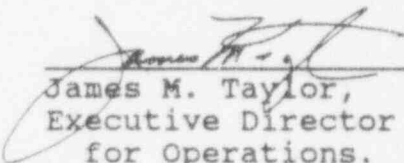
\$36,150

\$23,250

\$12,900

Dated at Rockville, MD this 6th day of May 1994.

For the Nuclear Regulatory Commission,



James M. Taylor,
Executive Director
for Operations.

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8. COMMENTS

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