



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

May 5, 1994

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1994, the NRC must collect approximately \$513 million through these fees as compared to \$518.9 million for FY 1993.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to 10 CFR Part 170 would result in license and inspection fees that are essentially unchanged from those of FY 1993.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1994 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Some of the FY 1994 annual fees would be increased as compared to FY 1993, while others would be decreased. Those NRC licensees that can qualify as a small entity under the NRC's size standards would continue to be eligible to pay reduced annual fees. For example, a licensee with gross annual receipts of \$250,000 to \$3.5 million would pay a maximum annual fee of \$1,800. Those licensees with gross annual receipts of less than \$250,000 would pay an annual fee of \$400.

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PDR PR
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Enclosed is a copy of the proposed rule which is being transmitted to the Federal Register for publication. This notice provides for a 30-day public comment period.

Sincerely,

Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Senator Alan K. Simpson



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

May 5, 1994

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Sincerely,

Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Representative Michael Bilirakis



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

May 5, 1994

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

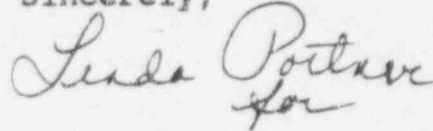
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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Representative Barbara Vucanovich



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

May 5, 1994

The Honorable J. Bennett Johnston, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998 by assessing license and annual fees. For FY 1994, the NRC must collect approximately \$513 million through these fees as compared to \$518.9 million for FY 1993.

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- 2 -

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Sincerely,

Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Senator Mark O. Hatfield



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

May 5, 1994

The Honorable Martin Olav Sabo, Chairman
Committee on the Budget
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

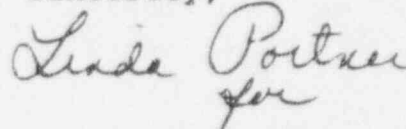
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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Representative John R. Kasich



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

May 5, 1994

The Honorable Jim Sasser, Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Senator Pete V. Domenici



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

May 5, 1994

The Honorable Tom Bevill, Chairman
Subcommittee on Energy and Water
Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

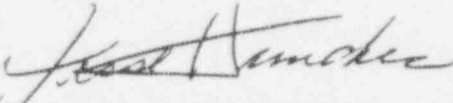
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Sincerely,


for Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Representative John T. Myers

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Sincerely,

Original signed by Linda Portner for/

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts 170
and 171

cc: Senator Alan K. Simpson

DISTRIBUTION: OC R/F, OC S/F, JHolloway, JFunches, RMScroggins,
DDandcois, LTremper, GJackson

OFFICE: OC *DD*
NAME: JHolloway
DATE: 05/3/94

OC *JF*
NAME: JFunches
DATE: 05/12/94

OC *RS*
NAME: RMScroggins
DATE: 05/12/94

OCA *DR*
NAME: DRathbun
DATE: 05/15/94

IDENTICAL LETTERS SENT TO:

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

cc: Representative Michael Bilirakis

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

cc: Representative Barbara Vucanovich

The Honorable J. Bennett Johnston, Chairman
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United States Senate
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cc: Representative John R. Kasich

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Committee on Budget
United States Senate
Washington, DC 20510

cc: Senator Pete V. Domenici

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AF03

Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement Public Law 101-508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately \$513 million.

DATES: The comment period expires (30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101-508 requires that NRC collect the FY 1994 fees by September 30, 1994, requests for extensions of the comment period will not be granted.

ADDRESSEES: Submit written comments to: Secretary, U.S. Nuclear

440608 0081

Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-504-1678).

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

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 Analysis.
- VIII. Backfit Analysis.

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed include the review of applications for the issuance of new licenses or approvals, amendments to or renewal of licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published five final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the Federal

Register that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR Part 170 hourly rate and fees and the 10 CFR Part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties; the U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the Federal Register two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 lowered in some cases the maximum annual fee of \$1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of \$400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), the NRC published final rules in the Federal Register that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992 and FY 1993 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669-72). The NRC created two groups--large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. In response to the March 16, 1993 judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which

included a request that the Commission exempt medical licensees from fees for services provided in nonprofit institutions. The Commission denied that request on March 17, 1994, (59 FR 12555).

Section 2903(c) of the Energy Policy Act of 1992 required the NRC to undertake a broad review of its annual fee policies under Section 6101(c) of OBRA-90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC found were needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC reviewed more than 500 public comments submitted in response to the request for comment published in the Federal Register on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees for FY 1994. OBRA-90 requires that the NRC recover approximately 100 percent of its FY 1994 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection, and annual fees.

For FY 1994, the NRC's budget authority was originally \$547.7 million. The Commission, in its effort to streamline operations, proposed a \$12.7 million rescission to the original appropriation for FY 1994. Congress approved this NRC proposed reduction resulting in a revised budget authority of \$535.0 million. Approximately \$22.0 million of the revised budget was appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$513.0 million in FY 1994 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. This amount for FY 1994 is about \$6 million less than the total amount for FY 1993. The NRC estimates that approximately \$116.2 million will be recovered in FY 1994 from the fees assessed under 10 CFR Part 170. The remaining \$396.8 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1994.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666) with the following exceptions. The Commission has reinstated the annual fee exemption for nonprofit educational institutions. In this proposed rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of

Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licenses that they support. As a result of this direct assignment, the cost per direct FTE is about 3% less than it would have been without the additional direct assignment.

The NRC contemplates that any fees to be collected as a result of this proposed rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1994, as stipulated in the Public Law. Therefore, as in FY 1991, FY 1992, and FY 1993, the fees, if adopted, will become effective 30 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the FY 1994 rule, which is estimated to be August 1, 1994.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services.

The NRC proposes four amendments to Part 170. These amendments do not change the underlying basis for the

regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the NRC proposes that the agency-wide professional hourly rate, which is used to determine the Part 170 fees, be increased from \$132 per hour to \$133 per hour (\$231,216 per direct FTE). The rate is based on the FY 1994 direct FTEs and that portion of the FY 1994 budget that is not direct program support (contractual services costs) and not recovered through the appropriation from the NWF. As indicated earlier, the decrease in the FY 1994 budget compared to the FY 1993 budget is primarily for direct program support which is not included in the hourly rate. Thus, the reduction in the budget has limited impact on the hourly rate but will show as a direct reduction to the amount allocated to the various classes of licensees.

Second, the NRC proposes that the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees be adjusted to reflect the very small increase in the hourly rate.

Third, the NRC is also proposing to revise the definition of special projects as provided in §170.3 of the regulations. This change is proposed because of (1) our experience in implementing the 100 percent fee recovery program during the past three years and (2) the NRC's most recent fee policy review that was required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees rather than assessing specific fees under 10 CFR Part 170. These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulatory guides and policy statements), and resolution of safety issues applicable to a class of licensees such as those addressed in generic letters. Therefore, the NRC proposes that the definition in §170.3 as well as the footnotes in §§ 170.21 and 170.31 be revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office

Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

Fourth, the NRC is proposing to amend Category 16 of §170.31, reciprocity, to include a fee to recover the costs expended by the NRC for the review of revisions to the information submitted on the NRC Form 241 filed by 10 CFR 150.20 general licensees during the remainder of the calendar year. Persons engaging in activities in a non-Agreement State under the reciprocity provisions of §150.20 are required to file an NRC Form 241 for the initial application in a calendar year. Revisions to the initial NRC Form 241 are filed for review and authorization in lieu of filing additional Forms 241 when persons using the 10 CFR 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

B. Amendments to 10 CFR 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 NRC.

The NRC proposes six amendments to 10 CFR Part 171. First, the NRC is proposing to amend § 171.11(a)(2) to provide that State-owned research reactors used primarily for education and training and academic research purposes will be exempt from the annual fee. The NRC believes that this proposed change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and research purposes.

Second, NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1994 to recover approximately 100 percent of the FY 1994 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Third, NRC proposes to amend fee Category 18 of §171.16(d) to assess fees to the Department of Energy (DOE) for the general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95-604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only

post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE would be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Since DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC proposes to assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Fourth, the NRC is proposing to amend 10 CFR 171.17 to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees would be prorated based on applications filed after October 1 of the fiscal year either to reduce the scope of a license or to terminate a license. Those materials licensees who file applications between October 1 and March 31 of the fiscal

year to downgrade the license or terminate the license would pay one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications on or after April 1 of the fiscal year to downgrade or terminate a license would pay the full annual fee. Those licensees who file for termination or downgrade must also permanently cease operations of those licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses or licenses of increased scope during the fiscal year would also be charged a prorated annual fee based on the date of issuance of the new license or license amendment increasing its scope. New materials licenses issued during the period October 1 through March 31 would be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee category(ies). New licenses issued on or after April 1 would not be assessed an annual fee.

In addition, materials licenses amended during the period from October 1 through March 31 to increase the scope would be assessed one-half the annual fee for the new fee category(ies). Materials licenses amended on or after April 1 to increase the scope of the license would not be assessed the annual fee for the new fee category(ies).

The NRC proposes to amend the proration provision in § 171.17 applicable to reactors to provide that for licensees who

have requested amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession only license was issued or the license was terminated.

Fifth, the NRC is proposing to modify Footnote 1 of 10 CFR 171.16(d) to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage license prior to October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993, would be subject to FY 1994 annual fees. This change is in recognition of the fact that since the final FY 1993 rule was published in July 1993, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1993 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1993. Similar situations existed after the FY 1991 and FY 1992 rules were published, and in those cases NRC provided

an exemption from the requirement that the annual fee is waived only where a license is terminated before October 1 of each fiscal year.

Sixth, the NRC is proposing to amend § 171.19 to credit the quarterly partial payments already made by certain licensees in FY 1994 either toward their total annual fee to be assessed or to make refunds, if necessary.

The proposed 10 CFR Part 171 annual fees have been determined using the same method used to determine the FY 1991, FY 1992, and FY 1993 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the increased professional hourly rate. The proposed amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec., at H12692-93).

During the past three years, many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainties regarding agency policy on this issue, the NRC amended 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993.

C. FY 1994 Budgeted Costs.

The FY 1994 budgeted costs, by major activity, to be recovered through 10 CFR Parts 170 and 171 fees, are shown in Table I.

Table I

Recovery of NRC's FY 1994 Budget Authority

<u>Recovery Method</u>	<u>Estimated Amount (\$ in Millions)</u>
Nuclear Waste Fund	\$22.0
Part 170 (license and inspection fees)	116.2
Other receipts	.1
Part 171 (annual fees)	
Power Reactors	306.0
Nonpower Reactors	.4
Fuel Facilities	16.8
Spent Fuel Storage	2.2
Uranium Recovery	2.1
Transportation	4.0
Material Users	<u>38.6^{1/}</u>
Subtotal Part 171	\$370.1
Costs remaining to be recovered not identified above	<u>\$26.6</u>
Total	\$535.0

^{1/}Includes \$6.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The NRC is proposing that the \$26.6 million identified for those activities which are not identified as either 10 CFR Parts 170 or 171 or the NWF in Table I be distributed among the classes of licensees as follows:

\$24.4 million to operating power reactors;

\$.7 million to fuel facilities; and

\$1.5 million to other materials licensees.

In addition, approximately \$6.3 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower tier small entity fee of \$400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1994 budget authority in accordance with OBRA-90, the NRC is proposing to recover \$5.3 million of the \$6.3 million from operating power reactors and the remaining \$1.0 million from other nonreactor entities that do not meet NRC small entity size standards.

This distribution results in an additional charge (surcharge) of approximately \$275,000 per operating power reactor; \$55,600 for each HEU, LEU, UF₆ and each other fuel facility license; \$1,500 for each materials license in a category that generates a significant amount of low level waste; and \$170 for other materials licenses. When added to the base annual fee of approximately \$2.8 million per reactor, this will result in an annual fee of approximately \$3.1 million per operating power reactor. The total fuel facility annual fee would be between approximately \$1.2 million and \$3.2 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

The proposed additional charges not directly or solely attributable to a specific class of NRC licensees and costs not recovered from all NRC licensees on the basis of previous Commission policy decisions would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in Section III of this proposed rule.

III. Section-by-Section Analysis

The following analysis of those sections that are affected under this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.3 Definitions.

This section would be amended to revise the definition of special projects. This proposed change is based on our experience during the past three years in implementing the 100 percent fee recovery program and the fee policy review required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees instead

of assessing specific fees under 10 CFR Part 170. Therefore, it is proposed that the definition in §170.3, as well as the footnotes in §§170.21 and 170.31, be revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

Section 170.20 Average cost per professional staff hour.

This section would be amended to reflect an agency-wide, professional staff-hour rate based on FY 1994 budgeted costs.

Accordingly, the NRC professional staff-hour rate for FY 1994 for all fee categories that are based on full cost is \$133 per hour, or \$231,216 per direct FTE. The rate is based on the FY 1994 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991, FY 1992, and FY 1993. The method is as follows:

1. All direct FTEs are identified in Table II by major program. It is noted that for FY 1994 the NRC has traced additional direct effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The cost for these activities had previously been included in overhead, but are now being directly assigned to the class of licensees that they support.

Table II
Allocation of Direct FTEs
by Major Program

Major Program	Number of direct FTEs ^{1/}
Reactor Safety & Safeguards Regulation	1,034.4
Reactor Safety Research	111.3
Nuclear Material & Low- Level Waste Safety & Safeguards Regulation	352.5
Reactor Special and Independent Reviews, Investigations, and Enforcement	111.7
Nuclear Material Management and Support	<u>19.0</u>
Total direct FTE	1,628.9 ^{2/}

^{1/} FTE (full time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

^{2/} In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:

- (a) Salaries and benefits.
- (b) Administrative support.

- (c) Travel.
- (d) Program support.

3. Direct program support, which is the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) 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 final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining \$376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of \$231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is \$133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing \$376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

Table III
 FY 1994 Budget Authority by Major Category
 (Dollars in millions)

Salaries and benefits	\$259.5
Administrative support	86.7
Travel	<u>15.9</u>
Total nonprogram support obligations	
	\$362.1
Program support	<u>150.9</u>
Total Budget Authority . . .	\$513.0
Less direct program support and offsetting receipts	
	<u>136.4</u>
Budget Allocated to Direct FTE	\$376.6
Professional Hourly Rate . . .	\$133

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect the FY 1994 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) costs expended by the NRC. Any professional hours

expended on or after the effective date of this rule would be assessed at the FY 1994 rate shown in § 170.20. The amount of the import and export licensing fees in § 170.21, facility Category K, has not changed from FY 1993 as a result of the very small increase in the hourly rate from \$132 per hour to \$133 per hour. Although the amount of the fees did not change, they are being published for purposes of convenience.

For those applications currently on file and pending completion, the NRC is proposing to revise footnote 2 of § 170.21 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 rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by §170.20.

Section 170.31 Schedule of Fees for Materials Licenses and

Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section would be modified to recover the FY 1994 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are adjusted to reflect the very small increase in the professional hourly rate from \$132 per hour in FY 1993 to \$133 per hour in FY 1994. In many cases, the fees for FY 1994 are the same as those assessed in FY 1993.

The amounts of the licensing and inspection flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to the nearest \$10.

The proposed fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

The NRC is proposing to amend Category 16, reciprocity, to

include a fee to recover the costs incurred by the NRC for the review of revisions to the information submitted on the NRC Form-241 filed by the 10 CFR 150.20 general licensees during the remainder of the calendar year. Persons engaging in activities in a non-Agreement State under the reciprocity provision of §150.20 are required to file an NRC Form 241 for the initial application in a calendar year. Revisions to the initial NRC Form 241 are filed for review and authorization in lieu of filing additional Forms 241 when persons using the 10 CFR 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of \$133, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Part 171

Section 171.11 Exemptions.

Paragraph (a)(2) of this section would be amended to exempt State-owned reactors used primarily for educational training and research purposes from annual fees. The NRC believes that this

proposed change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and research purposes. There is one research reactor, owned by the Rhode Island Atomic Energy Commission, that would be exempt under this proposed amendment to § 171.11.

Section 171.15 Annual Fee: Reactor operating licenses.

The annual fees in this section would be revised to reflect FY 1994 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) would be revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1994. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1994 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

Table IV

ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES^{1/}

	Program Element		Allocated to	
	<u>Total</u>		<u>Power Reactors</u>	
	Program	Direct	Program	Direct
	Support	Support	Support	Support
	(\$.K)	FTE	(\$.K)	FTE
REACTOR SAFETY AND SAFEGUARDS REGULATION (RSSR)				
Standard Reactor Designs	\$9,531	96.3	\$9,361	92.8
Reactor License Renewal	600	33.9	600	33.9
Reactor and Site Licensing	1,810	34.7	1,810	29.8
Resident Inspections	---	207.0	---	207.0
Region-Based Inspections	2,780	235.0	2,780	229.8
Interns (HQ and Regions)	---	23.0	---	23.0
Special Inspections	970	42.7	970	42.7
License Maintenance and Safety Evaluations	4,142	208.5	4,142	208.5
Plant Performance	927	52.1	927	52.1
Human Performance	4,760	54.7	4,403	51.1
Other Safety Reviews and Assistance	3,443	46.5	<u>3,213</u>	<u>38.8</u>
RSSR PROGRAM TOTAL			\$28,206	1,009.5

Table IV
(Continued)

	Program Element		Allocated to	
	<u>Total</u>		<u>Power Reactors</u>	
	Program	Direct	Program	Direct
	<u>Support</u>	<u>Support</u>	<u>Support</u>	<u>Support</u>
	<u>(\$,K)</u>	<u>FTE</u>	<u>(\$,K)</u>	<u>FTE</u>
REACTOR SAFETY RESEARCH (RSR)				
Standard Reactor Designs	\$16,676	29.3	\$16,676	29.3
Reactor Aging & License Renewal	23,273	13.7	22,573	13.6
Plant Performance	3,173	4.2	3,173	4.2
Human Reliability	4,428	7.0	4,428	7.0
Reactor Accident Analysis	20,284	26.7	20,284	26.7
Safety Issue Resolution and Regulatory Improvements	10,240	30.4	<u>10,240</u>	<u>30.4</u>
RSR PROGRAM TOTAL			\$77,374	111.2
NUCLEAR MATERIAL & LOW LEVEL (NMLL)				
<u>NMLL (NMSS)</u>				
Fuel Cycle Safety and Safeguards	\$4,783	85.8	\$1,494	2.8
LLW Licensing and Inspection	592	14.3	---	1.4
Uranium Recovery Licensing and Inspection	265	14.4	21	0
Decommissioning	2,215	30.8	9	6.7
<u>NMLL (RES)</u>				
Environmental Policy and Decommissioning	2,410	9.0	<u>964</u>	<u>3.6</u>
NMLL PROGRAM TOTAL			\$2,488	14.5

Table IV
(Continued)

	Program Element		Allocated to	
	Program	Direct	Program	Direct
	Support (\$,K)	FTE	Support (\$,K)	FTE
REACTOR SPECIAL AND INDEPENDENT REVIEWS, INVESTIGATIONS, AND ENFORCEMENT				
<u>AEOD</u>				
Diagnostic Evaluations	288	5.0	288	5.0
Incident Investigations	26	1.0	26	1.0
NRC Incident Response	1,854	26.0	1,854	24.0
Operational Experience Evaluation	5,447	30.0	5,447	29.0
Committee to Review Generic Requirements	---	2.0	---	2.0
			-----	-----
AEOD Subtotal			\$7,615	61.0
Advisory Committee on Reactor Safeguards			181	20.5
Office of Investigations			---	17.0
Office of Enforcement			<u>10</u>	<u>7.0</u>
RSIRIE Program Total			\$7,806	105.5

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS			\$402.7	million ^{2/}
LESS ESTIMATED PART 170 POWER REACTOR FEES			\$96.7	million
PART 171 BASE FEES FOR OPERATING POWER REACTORS			<u>\$306.0</u>	<u>million</u>

^{1/} Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1994 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V
BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment Type	Annual Fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	\$2,841,000 2,841,000
2. Beaver Valley 2	" "	2,841,000
3. Braidwood 1	" "	2,841,000
4. Braidwood 2	" "	2,841,000
5. Byron 1	" "	2,841,000
6. Bryon 2	" "	2,841,000
7. Callaway 1	" "	2,841,000
8. Comanche Peak 1	" "	2,841,000
9. Comanche Peak 2	" "	2,841,000
10. Diablo Canyon 1	" "	2,839,000
11. Diablo Canyon 2	" "	2,839,000
12. Farley 1	" "	2,841,000
13. Farley 2	" "	2,841,000
14. Ginna	" "	2,841,000
15. Haddam Neck	" "	2,841,000
16. Harris 1	" "	2,841,000
17. Indian Point 2	" "	2,841,000
18. Indian Point 3	" "	2,841,000
19. Kewaunee	" "	2,841,000

20.	Millstone 3	"	"	\$2,841,000
21.	North Anna 1	"	"	2,841,000
22.	North Anna 2	"	"	2,841,000
23.	Point Beach 1	"	"	2,841,000
24.	Point Beach 2	"	"	2,841,000
25.	Prairie Island 1	"	"	2,841,000
26.	Prairie Island 2	"	"	2,841,000
27.	Robinson 2	"	"	2,841,000
28.	Salem 1	"	"	2,841,000
29.	Salem 2	"	"	2,841,000
30.	Seabrook 1	"	"	2,841,000
31.	South Texas 1	"	"	2,841,000
32.	South Texas 2	"	"	2,841,000
33.	Summer 1	"	"	2,841,000
34.	Surry 1	"	"	2,841,000
35.	Surry 2	"	"	2,841,000
36.	Turkey Point 3	"	"	2,841,000
37.	Turkey Point 4	"	"	2,841,000
38.	Vogtle 1	"	"	2,841,000
39.	Vogtle 2	"	"	2,841,000
40.	Wolf Creek 1	"	"	2,841,000
41.	Zion 1	"	"	2,841,000
42.	Zion 2	"	"	2,841,000
43.	Catawba 1	PWR --	Ice Condenser	2,840,000
44.	Catawba 2	"	"	2,840,000
45.	Cook 1	"	"	2,840,000

46.	Cook 2	"	"	\$2,840,000
47.	McGuire 1	"	"	2,840,000
48.	McGuire 2	"	"	2,840,000
49.	Sequoyah 1	"	"	2,840,000
50.	Sequoyah 2	"	"	2,840,000

Combustion Engineering:

1.	Arkansas 2	PWR Large Dry Containment		\$2,840,000
2.	Calvert Cliffs 1	"	"	2,840,000
3.	Calvert Cliffs 2	"	"	2,840,000
4.	Ft. Calhoun 1	"	"	2,840,000
5.	Maine Yankee	"	"	2,840,000
6.	Millstone 2	"	"	2,840,000
7.	Palisades	"	"	2,840,000
8.	Palo Verde 1	"	"	2,838,000
9.	Palo Verde 2	"	"	2,838,000
10.	Palo Verde 3	"	"	2,838,000
11.	San Onofre 2	"	"	2,838,000
12.	San Onofre 3	"	"	2,838,000
13.	St. Lucie 1	"	"	2,840,000
14.	St. Lucie 2	"	"	2,840,000
15.	Waterford 3	"	"	2,840,000

Babcock & Wilcox:

1.	Arkansas 1	"	"	\$2,840,000
2.	Crystal River 3	"	"	2,840,000

3.	Davis Besse 1	"	"	\$2,840,000
4.	Oconee 1	"	"	2,840,000
5.	Oconee 2	"	"	2,840,000
6.	Oconee 3	"	"	2,840,000
7.	Three Mile Island 1	"	"	2,840,000

General Electric

1.	Browns Ferry 1	Mark I		\$2,821,000
2.	Browns Ferry 2	"	"	2,821,000
3.	Browns Ferry 3	"	"	2,821,000
4.	Brunswick 1	"	"	2,821,000
5.	Brunswick 2	"	"	2,821,000
6.	Clinton 1	Mark III		2,821,000
7.	Cooper	Mark I		2,821,000
8.	Dresden 2	"	"	2,821,000
9.	Dresden 3	"	"	2,821,000
10.	Duane Arnold	"	"	2,821,000
11.	Fermi 2	"	"	2,821,000
12.	Fitzpatrick	"	"	2,821,000
13.	Grand Gulf 1	Mark III		2,821,000
14.	Hatch 1	Mark I		2,821,000
15.	Hatch 2	"	"	2,821,000
16.	Hope Creek 1	"	"	2,821,000
17.	LaSalle 1	Mark II		2,821,000
18.	LaSalle 2	"	"	2,821,000
19.	Limerick 1	"	"	2,821,000

20.	Limerick 2	" "	\$2,821,000
21.	Millstone 1	Mark I	2,821,000
22.	Monticello	" "	2,821,000
23.	Nine Mile Point 1	" "	2,821,000
24.	Nine Mile Point 2	Mark II	2,821,000
25.	Oyster Creek	Mark I	2,821,000
26.	Peach Bottom 2	" "	2,821,000
27.	Peach Bottom 3	" "	2,821,000
28.	Perry 1	Mark III	2,821,000
29.	Pilgrim	Mark I	2,821,000
30.	Quad Cities 1	" "	2,821,000
31.	Quad Cities 2	" "	2,821,000
32.	River Bend 1	Mark III	2,821,000
33.	Susquehanna 1	Mark II	2,821,000
34.	Susquehanna 2	" "	2,821,000
35.	Vermont Yankee	Mark I	2,821,000
36.	Washington Nuclear 2	Mark II	2,818,000

Other Reactor:

1.	Big Rock Point	GE Dry Containment	2,821,000
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The "Other Reactor" listed in Table V has not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. The NRC proposes to grant a similar partial exemption in FY 1994 to Big Rock Point, a smaller older reactor, based on a request filed with the NRC in accordance with § 171.11.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1993 to FY 1994. Paragraph (c)(2) would be amended to show the amount of the surcharge for FY 1994. This surcharge is added to the base annual fee for each operating power reactor shown in Table V. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA-90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1994 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

<u>Category of Costs</u>	
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. reviews for DOE/DOD reactor projects, and West Valley Demonstration Project;	\$2.4
b. international cooperative safety program and international safeguards activities; and	8.2
c. low level waste disposal generic activities;	6.0
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. Licensing and inspection activities associated with nonprofit educational institutions; and	7.8
b. costs not recovered from Part 171 for small entities.	<u>5.3</u>
Total Budgeted Costs	\$29.7

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$29.7 \text{ million}}{108} = \$275,000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of \$2,841,000 and an additional charge of \$275,000 for a total annual fee of \$3,116,000 for FY 1994.

Paragraph (d) would be revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, \$373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of \$62,200 per operating license. The Energy Policy Act establishes an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695), final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC intends to continue to grant exemptions from the annual fee to those Federally owned reactors who meet the exemption criteria as specified in § 171.11. The NRC is proposing to amend §171.11(a)(2) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission.

Section 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.

§171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$250,000 to \$3.5 million pay a maximum annual fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

Paragraph (d) would be revised to reflect the FY 1994 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1994 generic costs totalling \$63.7 million that apply to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Fee Category 18 would be amended to assess fees to the Department of Energy (DOE) for use of the general license provided under 10 CFR 40.27. Currently, DOE is billed for the issuance of transportation Certificates of Compliance. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95-

604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The \$40.27 general license covers only post-reclamation closure custody and site surveillance. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent in the FY 1991 final fee rule to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE would be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the IOAA, the NRC proposes to assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

Table VI

ALLOCATION OF NRC FY 1994 BUDGET TO FUEL
FACILITY BASE FEES^{1/}

	Total Program Element		Allocated to Fuel Facility	
	Program Support \$,K	FTE	Program Support \$,K	FTE
NMLL (RESEARCH)	\$			
Radiation Protection/Health Effects	\$1,575	5.3	\$315	1.1
Environmental Policy and Decommissioning	\$2,410	9.0	<u>\$241</u>	<u>.9</u>
NMLL (RES) PROGRAM TOTAL			\$556	2.0
NMLL (NMSS)				
Fuel Cycle Safety and Safeguards	\$4,783	85.8	\$2,432	57.1
Event Evaluation	-0-	14.9	-0-	4.2
Decommissioning	\$2,215	30.8	\$309	10.5
Uranium Recovery (DAM SAFETY)	\$250	7.6	<u>3</u>	<u>-0-</u>
NMLL (NMSS) PROGRAM TOTAL			\$2,744	71.8
NMLL (MSIRIE)				
Incident Response			-0-	1.0
Enforcement			<u>-0-</u>	<u>1.2</u>
NMLL MSIRIE Program Total			-0-	2.2
TOTAL NMLL			***** \$3,300	**** 76.0
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TOTAL BASE FEE AMOUNT ALLOCATED TO FUEL FACILITIES			\$20.8 million ^{2/}	
LESS PART 170 FUEL FACILITY FEES			<u>4.0</u> million	
PART 171 BASE FEES FOR FUEL FACILITIES			\$16.8 million	

^{1/} Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Table VII

ALLOCATION OF FY 1994 BUDGET TO MATERIAL USERS' BASE FEES^{1/}

	Total		Allocated to Materials Users	
	Program Support \$,K	FTE	Program Support \$,K	FTE
NMLL (RESEARCH)				
Materials Licensee Performance	\$450	1.2	\$405	1.1
Materials Regulatory Standards	1,495	12.2	1,346	11.0
Radiation Protection/Health Effects	1,575	5.3	1,134	3.8
Environmental Policy and Decommissioning	2,410	9.0	<u>1,085</u>	<u>4.1</u>
TOTAL NMLL (RES)			\$3,970	20.0
NMLL (NMSS)				
Licensing/Inspection of Materials Users	\$965	109.3	869	99.5
Event Evaluation	---	16.2	---	11.4
Information Technology - NMSS	1,100	---	89	---
Decommissioning	2,215	30.8	1,707	12.0
Low level waste - on site disposal	592	14.3	<u>71</u>	<u>2.3</u>
TOTAL NMLL (NMSS)			\$2,736	125.2
NMLL (MSIRIE)				
Analysis and Evaluation of Operational Data	\$186	6.0	167	4.5
Office of Investigations	---	7.0	---	6.3
Office of Enforcement	10	6.8	<u>9</u>	<u>5.0</u>
TOTAL NMLL Program			\$6,882	161.0

BASE AMOUNT ALLOCATED TO MATERIALS USERS (\$,M)			\$44.1 million ^{2/}	
LESS PART 170 MATERIAL USERS FEES			<u>\$5.5 million</u>	
PART 171 BASE FEES FOR MATERIAL USERS			\$38.6 million	

^{1/} Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.

^{2/} Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's \$16.8 million in budgeted costs to the individual fuel facilities is based, as in FY 1991, FY 1992, and FY 1993, primarily on the OBRA-90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as compared to other facilities. However, safety program assessment and safety event evaluation costs for fuel facilities are uniformly allocated to HEU and LEU facilities because these activities apply equally to each of the HEU and LEU facilities.

Using this approach, the base annual fee for each facility is shown below.

	<u>Annual Fee</u>
<u>High Enriched Fuel</u>	<u>Safeguards and Safety</u>
Nuclear Fuel Services	\$3,176,000
Babcock and Wilcox	<u>3,176,000</u>
Subtotal	\$6,352,000
<u>Low Enriched Fuel</u>	
Siemens Nuclear Power	\$1,429,000
Babcock and Wilcox	1,429,000
General Electric	1,429,000
Westinghouse	1,429,000
Combustion Engineering (Hematite)	1,429,000
General Atomic	<u>1,429,000</u>
Subtotal	\$8,574,000

U₂ ConversionSafeguards and Safety

Allied Signal Corp.

\$1,114,000

Other fuel facilities
(3 facilities at \$254,000
each)\$762,000

Total

\$16,802,000

One of Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, directing the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC proposes to grant an exemption to one of CE's low enriched uranium fuel facilities for FY 1994. The NRC will therefore exclude this facility from the calculation of the FY 1994 annual fees for the low enriched fuel category.

Of the \$2.1 million attributable to the uranium recovery class of licensees, about \$1.5 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating power reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under Part 171. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook Wyoming site had been achieved. It is estimated that approximately 44 percent of the remaining costs of \$639,000 for uranium recovery

is attributable to uranium mills (Class I facilities). Approximately 39 percent of the \$639,000 for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 17 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities	\$94,300
Class II facilities	\$41,200
Other facilities	\$36,200

The annual fees for FY 1994 for the uranium recovery class of licensees are about 40 percent less than the FY 1992 fees and are about 60 percent higher than the FY 1993 annual fees. The total amount of fees that must be recovered from the uranium recovery class has decreased by about 10 percent compared to FY 1993; however, the annual fee per facility has increased for two basic reasons. First the amount that is expected to be recovered through Part 170 fees has decreased as a result of completing the licensing of the Envirocare 11.e(2) byproduct disposal facility. This requires relatively more costs to be recovered through annual fees. The second cause of the increases is a decrease in the number of licensees in the class to be assessed annual fees for FY 1994.

For spent fuel storage licenses, the generic costs of \$2.2 million have been spread uniformly among those licensees who hold

specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of \$363,500.

To equitably and fairly allocate the \$38.6 million attributable to the approximately 6,500 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency. Inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

$$\text{Annual Fee} = (\text{Application Fee} + \text{Inspection Fee}/\text{Inspection Priority}) \times \text{Constant} + (\text{Unique Category Costs}).$$

The constant is the multiple necessary to recover \$38.6 million and is 2.6 for FY 1994. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1994, unique costs of approximately \$2.6 million were identified for the medical improvement program which is attributable to medical licensees. Materials annual fees for FY 1994 are 13-17% higher compared to the FY 1993 annual fees. There are two basic reasons for the changes in the fees from FY

1993. First, the FY 1994 budgeted amount attributable to materials licensees is about 10 percent higher than the comparable FY 1993 amount. Second, the number of licensees to be assessed annual fees in FY 1994 has decreased (from about 6,800 to about 6,500 resulting in a 4% increase in fees). The materials fees must be established at the proposed levels in order to comply with the mandate of OBRA-90 to recover approximately 100 percent of the NRC's FY 1994 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the \$4.0 million attributable to the transportation class of licensees, about \$923,000 would be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities (\$3.1 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is \$64,700 for users and fabricators and \$900 for users only.

The amount or range of the FY 1994 base annual fees for all materials licensees is summarized as follows:

Materials Licenses
Base Annual Fee Ranges

<u>Category of License</u>	<u>Annual Fees</u>
Part 70 - High enriched fuel	\$3.2 million

Part 70 - Low enriched fuel	\$1.4 million
Part 40 - UF ₆ conversion	\$1.1 million
Part 40 - Uranium recovery	\$36,200 to \$94,300
Part 30 - Byproduct Material	\$970 to \$30,900 ^{1/}
Part 71 - Transportation of Radioactive Material	\$900 to \$64,700
Part 72 - Independent Storage of Spent Nuclear Fuel	\$363,500

^{1/} Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$430,500.

Paragraph (e) would be amended to establish the additional charge which is to be added to the base annual fees shown in paragraph (d) of this final rule. The Commission is continuing the approach used in FY 1993 so as to assess the budgeted LLW costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of \$8.1 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that

dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

<u>Category of Costs</u>	<u>FY 1994 Budgeted Costs (\$ In Millions)</u>
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities.	\$8.1

Of the \$8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount (\$6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of \$55,600 per facility. Thus, the LLW charge will be \$55,600 per HEU, LEU, UF₆ facility, and each of the other 3 fuel facilities. The remaining \$1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: \$1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the \$1,500 surcharge are in 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, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is \$22,800.

Of the \$6.3 million not recovered from small entities, \$1.0

million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of \$170 per category for each fuel facility and materials licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility (a high enriched fuel fabrication licensee, for example) would pay a base annual fee of \$3,176,000 and an additional charge of \$55,770 for LLW activities and small entity costs. A medical center with a broad-scope program would pay a base annual fee of \$30,900 and an additional charge of \$1,670, for a total FY 1994 annual fee of \$32,570.

Section 171.17 Proration.

10 CFR 171.17 would be amended to add a proration provision for materials licenses and to revise the provision for reactors. The annual fee for materials licenses would be prorated based on applications filed after October 1 of the fiscal year either to reduce the scope of a license or to terminate a license. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to downgrade the license or terminate the license would pay one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications to downgrade or terminate a license on or after April 1 of the fiscal year would pay the full annual fee. Those licensees who file for termination or downgrade must also permanently cease operations of those licensed activities

during the periods mentioned for the fee to be reduced. Similarly, materials licensees who were issued new licenses or licenses of increased scope during the fiscal year would also be charged a prorated annual fee based on the date of issuance of the new license or license amendment increasing the scope. New materials licenses issued during the period October 1 through March 31 would be assessed one-half of the FY 1994 annual fee stated in § 171.16(d) for the applicable fee categories. New licenses issued on or after April 1 would not be assessed the FY 1994 annual fee. Materials licenses amended during the period October 1 through March 31 to increase the scope would be assessed one-half the annual fee for the new fee category(ies). Materials licenses amended on or after April 1 to increase the scope would not be assessed the annual fee for the new fee category(ies).

The NRC proposes to amend the proration provision in §171.17 applicable to reactors to provide that for licensees who have requested a license amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession-only license was issued or the license was terminated.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of the annual fees for those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for

possession only/storage only licenses before October 1, 1993, and permanently cease licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993 would be subject to the FY 1994 annual fees.

Section 171.19 Payment.

This section would be revised to give credit for partial payments made by certain licensees in FY 1994 toward their FY 1994 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1994 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, as necessary. As in FY 1993, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past three years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer

needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

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

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

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission 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. 36 (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 IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 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, by the U.S. Court of Appeals for the Fifth Circuit in

Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held that--

(1) The NRC 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 the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(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.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget

authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1994 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1994 budget of \$535.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle

licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in Florida Power and Light Company v. United States, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in Skinner v. Mid-American Pipeline Co., 109 S. Ct. 1726 (1989), and the denial of certiorari in Florida Power and Light, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges

among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1994. The proposed rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed 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

10 CFR Part 170 -- Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials.

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. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170, and 171.

PART 170 -- FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 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); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 902).

2. In § 170.3, the definition special projects is revised to read as follows:

§ 170.3 Definitions.

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin;
or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

3. 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 reviews, approvals, and inspections under §§170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1994 budget is \$133 per hour.

4. In § 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised and a new footnote 4 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

Schedule of Facility Fees
(see footnotes at end of table)

Facility Categories and Type of Fees Fees^{1/} ^{2/}

J. Special Projects:^{4/}

Approvals and preapplication/licensing activities.. Full Cost
 Inspections Full Cost

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110.

1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).

Application-new license \$8,600
 Amendment \$8,600

2. Application for import or export of reactor

components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).

Application-new license \$5,300
Amendment \$5,300

3. Application for export of components requiring foreign government assurances only.

Application-new license \$3,300
Amendment \$3,300

4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances.

Application-new license \$1,300
Amendment \$1,300

5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review.

Amendment \$130

^{1/} Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other 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. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

^{2/} Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For 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 rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by \$ 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in \$ 170.20. In no event will the total review costs be less than twice the hourly rate shown in \$170.20.

4/ Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

5. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export 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^{1/} 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:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

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

License, Renewal, Amendment	Full Cost
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Inspections 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	\$570
Renewal	\$680
Amendment	\$360
Inspections	\$670

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	\$600
Renewal	\$430
Amendment	\$330
Inspections	\$1,200

E. Licenses for construction and operation of

a uranium enrichment facility.

Application	\$125,000
License, Renewal, Amendment	Full Cost
Inspections	Full Cost

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:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

B. Licenses which authorize only the possession, use and/or installation of source material for shielding:

Application - New license	\$230
Renewal	\$160
Amendment	\$270
Inspections	\$560

C. All other source material licenses:

Application - New license	\$2,500
Renewal	\$1,400
Amendment	\$450
Inspections	\$2,500

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	\$2,700
Renewal	\$1,700
Amendment	\$470

Inspections \$9,800^{2/}

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 \$1,300
Renewal \$2,200
Amendment \$600
Inspections \$3,000^{2/}

C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 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 \$3,500
Renewal \$3,000
Amendment \$490
Inspections \$3,400

D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 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	\$1,300
Renewal	\$550
Amendment	\$370
Inspections	\$3,000

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	\$930
Renewal	\$760
Amendment	\$330
Inspections	\$1,200

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. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$1,300
Renewal	\$1,000
Amendment	\$330
Inspections	\$1,300

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. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	\$5,300
Renewal	\$4,800
Amendment	\$640
Inspections	\$4,100

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	\$2,400
Renewal	\$2,300
Amendment	\$800
Inspections	\$1,100

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	\$4,600
Renewal	\$2,700
Amendment	\$1,100
Inspections	\$1,000

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	\$1,400
Amendment	\$370
Inspections	\$1,800

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	\$2,000
Renewal	\$1,400
Amendment	\$270
Inspections	\$1,000

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	\$4,100
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Renewal	\$2,200
Amendment	\$630
Inspections	\$4,700

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	\$1,400
Renewal	\$1,500
Amendment	\$690
Inspections	\$2,200

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

Application - New license	\$1,700
Renewal	\$2,100
Amendment	\$680
Inspections	\$2,400

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this

chapter for industrial radiography operations:

Application - New license	\$3,800
Renewal	\$2,900
Amendment	\$690
Inspections	\$3,500 ^{2/}

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

Application - New license	\$570
Renewal	\$680
Amendment	\$360
Inspections	\$1,500

4. Waste disposal and processing:

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

to receive or dispose of waste material:

License, renewal, amendment . . .	Full Cost
Inspections	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	\$4,000
Renewal	\$2,100
Amendment	\$430
Inspections	\$2,300

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

Application - New license	\$1,500
Renewal	\$1,100
Amendment	\$250

Inspections \$2,800

- D. Licenses specifically authorizing the receipt from other persons of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.

License, renewal, amendment Full Cost

Inspections Full Cost

5. Well logging:

- A. Licenses for possession and 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 \$3,700

Renewal \$3,900

Amendment \$650

Inspections \$3,600

- B. Licenses for possession and use of byproduct material for field flooding tracer studies:

License, renewal, amendment . . . Full Cost

Inspections \$1,300

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	\$4,500
Renewal	\$2,900
Amendment	\$700
Inspections	\$4,500

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	\$3,700
Renewal	\$1,200
Amendment	\$560
Inspections	\$2,300

- 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	\$2,700
Renewal	\$3,500
Amendment	\$500
Inspections	\$8,700

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	\$1,100
Renewal	\$1,400
Amendment	\$500
Inspections	\$2,100

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	\$670
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Renewal	\$700
Amendment	\$480
Inspections	\$1,100

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	\$3,700
Amendment - each device	\$1,300
Inspections	Full Cost

- 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	\$1,900
Amendment - each device	\$670
Inspections	Full Cost

- C. Safety evaluation of sealed sources containing byproduct material, source material, or special

nuclear material, except reactor fuel, for commercial distribution:

Application - each source	\$800
Amendment - each source	\$270
Inspections	Full Cost

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	\$400
Amendment - each source	\$130
Inspections	Full Cost

10. Transportation of radioactive material:

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

Approval, Renewal, Amendment	Full Cost
Inspections	Full Cost

B. Evaluation of 10 CFR Part 71 quality assurance programs:

Application - Approval	\$370
Renewal	\$280
Amendment	\$320
Inspections	Full Cost

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment . .	Full Cost
Inspections	Full Cost

12. Special projects:^{2/}

Approvals and preapplication/ licensing activities	Full Cost
Inspections	Full Cost

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

Approvals	Full Cost
Amendments, revisions, and supplements	Full Cost
Reapproval	Full Cost

B. Inspections related to spent fuel storage
cask Certificate of Compliance Full Cost

C. Inspections related to storage of spent fuel
under § 72.210 of this chapter 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 Parts 30, 40, 70, and 72
of this chapter:

Approval, Renewal, Amendment . . Full Cost
Inspections Full Cost

15. Import and Export licenses:

Licenses issued pursuant to 10 CFR Part 110 of this chapter
for the import and export only of special nuclear material,
source material, byproduct material, heavy water, tritium,
or nuclear grade graphite.

A. Application for import or export of HEU and other
materials which must be reviewed by the Commission and
the Executive Branch, for example, those actions under
10 CFR 110.40(b).

Application-new license \$8,600
Amendment \$8,600

B. Application for import or export of special nuclear

material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)-(8).

Application-new license \$5,300
Amendment \$5,300

C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.

Application-new license \$3,300
Amendment \$3,300

D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.

Application-new license \$1,300
Amendment \$1,300

E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.

Amendment \$130

16. Reciprocity:

Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.

Application (each filing of Form 241)	\$700
Renewal	N/A
Revisions	\$200
Inspections	Fees as specified in appropriate fee categories in this section.

^{1/}Types of fees - Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license

provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) 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; and (2) applications for licenses under Category 1E must be accompanied by an application fee of \$125,000.

(b) License/approval/review fees - Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) Renewal/reapproval fees - Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) Amendment fees -

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license

affected. An application for an amendment to a license or approval classified in more than one fee 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. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) 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.

(3) 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.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) Inspection fees - Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including

inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not 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 unless 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 plus any applicable contractual support services costs incurred. 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 and 6 for other inspection notes.

^{2/}Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections 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.

^{2/}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 final rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993 rules, as appropriate. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by \$170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August

8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

⁴/Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except 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.

²/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.

⁵/Fees as specified in appropriate fee categories in this section.

²/Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

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.

6. 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).

7. In § 171.11, paragraph (a)(2) is revised to read as follows:

§ 171.11 Exemptions.

(a) ***

(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that--

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain--

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

8. In § 171.15, paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in §171.11(a)(1) and (a)(2).

(b) ***

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1994 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1994, are shown in paragraph (d) of this section.

(c) ***

(2) The FY 1994 surcharge to be added to each operating power reactor is \$275,000. This amount is calculated by dividing the total cost for these activities (\$29.7 million) by the number of operating power reactors (108).

(d) The FY 1994 Part 171 annual fees for operating power reactors are as follows:

Part 171 Annual Fees by Reactor Category¹

(Fees in Thousands)

<u>Reactor Vendor</u>	<u>Number</u>	<u>Base Fee</u>	<u>Added Charge</u>	<u>Total Fee</u>	<u>Estimated Collections</u>
Babcock/Wilcox	7	\$2,840	275	\$3,115	\$21,805
Combustion Eng.	15	2,840	275	3,115	46,725
GE Mark I	24	2,821	275	3,096	74,304
GE Mark II	8	2,821	275	3,096	24,768
GE Mark III	4	2,821	275	3,096	12,384
Westinghouse	<u>50</u>	<u>2,841</u>	275	3,116	<u>\$155,800</u>
Totals	108				\$335,786

¹Fees assessed will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor \$62,200

Test reactor \$62,200

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised 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.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1994 as follows:

<u>Small Businesses and Small Not-For-Profit Organizations (Gross Annual Receipts)</u>	<u>Maximum Annual Fee Per Licensed Category</u>
\$250,000 to \$3.5 million	\$1,800
Less than \$250,000	\$400
<u>Private Practice Physicians (Gross Annual Receipts)</u>	
\$250,000 to \$1.0 million	\$1,800
Less than \$250,000	\$400

Small Governmental Jurisdictions
(Including publicly supported
educational institutions)
(Population)

20,000 to 50,000 \$1,800

Less than 20,000 \$400

Educational Institutions that \$1,800
are not State or Publicly
Supported, and have 500 Employees
or Less.

(4) For FY 1994, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is \$1,800 for each category applicable to the license(s).

(d) The FY 1994 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC
(See footnotes at end of table)

Category of materials licenses Annual Fees^{1. 2. 3}

1. Special nuclear material:

A.(1) Licenses for possession and use
of U-235 or plutonium for fuel
fabrication activities.

<u>High Enriched Fuel</u>	<u>License No.</u>	<u>Docket No.</u>	
Babcock and Wilcox	SNM-42	70-27	\$3,176,000
Nuclear Fuel Services	SNM-124	70-143	3,176,000
<u>Low Enriched Fuel</u>			
B&W Fuel Company	SNM-1168	70-1201	1,429,000
Combustion Engineering (Hematite)	SNM-33	70-36	1,429,000
General Electric Company	SNM-1097	70-1113	1,429,000
Siemens Nuclear Power	SNM-1227	70-1257	1,429,000
Westinghouse Electric Company	SNM-1107	70-1151	1,429,000
General Atomic	SNM-696	70-734	1,429,000
Surcharge			\$55,770

A.(2) All other special nuclear
materials licenses not included
in 1.A.(1) above 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. \$254,000

Surcharge \$55,770

B. Licenses for receipt and storage of
spent fuel at an independent spent
fuel storage installation (ISFSI). \$363,500

Surcharge \$1,670

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. \$1,800

Surcharge \$170

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 1.A.(2). \$2,200

Surcharge \$1,670

E. Licenses for the operation of a uranium enrichment facility. \$ N/A^{11/}

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride. \$1,114,000

Surcharge \$55,770

(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, 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.

Class I facilities* \$94,300

Class II facilities* \$41,200

Other facilities \$36,200

Surcharge \$170

B. Licenses which authorize only the
possession, use and/or installation of
source material for shielding. \$800

Surcharge \$170

C. All other source material licenses. \$8,700

Surcharge \$1,670

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. \$19,700

Surcharge \$1,670

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. \$6,000

Surcharge \$1,670

C. Licenses issued pursuant to §§ 32.72,
32.73, and/or 32.74 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.
This category also includes the possession
and use of source material for shielding
authorized pursuant to Part 40 of this
chapter when included on the same
license. \$12,000

Surcharge \$1,670

D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. \$6,000

Surcharge \$170

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). \$3,500

Surcharge \$170

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. This category

also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$4,500

Surcharge \$170

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. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. \$24,400

Surcharge \$170

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. \$6,800

Surcharge \$170

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. \$12,500

Surcharge \$170

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. \$6,600

Surcharge \$170

K. Licenses issued pursuant to Subpart B of Part 31 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. \$6,100

Surcharge \$170

L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Part 30 and 33 of this chapter for research and development that do not authorize commercial distribution. \$14,700

Surcharge \$1,670

- 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. \$5,100

Surcharge \$1,670

- N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D. \$6,000

Surcharge \$1,670

- O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized

pursuant to Part 40 of this chapter when
authorized on the same license. \$19,000

Surcharge \$170

P. All other specific byproduct material
licenses, except those in Categories 4A
through 9D. \$2,300

Surcharge \$170

4. Waste disposal and processing:

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

of packages to another person
authorized to receive or dispose
of waste material. \$130,200^{5/}

Surcharge \$1,670

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. \$16,400

Surcharge \$1,670

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. \$7,500

Surcharge \$1,670

- D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to the fees in Category 2.A.(2). \$8,700

Surcharge \$1,670

5. Well logging:

- A. Licenses for possession and 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. \$12,700

Surcharge \$170

- B. Licenses for possession and use of byproduct material for field flooding tracer studies. \$15,400

Surcharge \$1,670

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. \$15,600

Surcharge \$1,670

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. This category also includes the possession and use of source material for shielding when authorized on the same license. \$16,900

Surcharge \$170

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. This category also includes the possession and use of source material for shielding when authorized on the same license.^{2/} \$30,900

Surcharge \$1,670

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. This category also includes the possession and use of source material for shielding when authorized on the same license.^{2/} \$5,900

Surcharge \$170

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. \$2,100

Surcharge \$170

9. Device, product, or sealed source safety evaluation:

A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. \$9,600

Surcharge \$170

B. Registrations issued for the 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. \$4,900

Surcharge \$170

C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. \$2,100

Surcharge \$170

D. Registrations issued for the 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. \$1,000

Surcharge \$170

10. Transportation of radioactive material:

A. Certificates of Compliance or other package approvals issued for design of

casks, packages, and shipping containers.

Spent Fuel, High-Level Waste, and N/A^{5/}
plutonium air packages

Other Casks N/A^{5/}

B. Approvals issued of 10 CFR Part 71
quality assurance programs.

Users and Fabricators \$64,700

Users \$900

Surcharge \$170

11. Standardized spent fuel facilities. N/A^{5/}

12. Special Projects N/A^{5/}

13. A. Spent fuel storage cask Certificate N/A^{5/}
of Compliance.

B. General licenses for storage of \$363,500
spent fuel under 10 CFR 72.210.

Surcharge \$170

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.	N/A ^{2/}
15.	Import and Export licenses	N/A ^{2/}
16.	Reciprocity	N/A ^{2/}
17.	Master materials licenses of broad scope issued to Government agencies.	\$430,500
	Surcharge	\$22,970
18.	Department of Energy:	
	a. Certificates of Compliance	\$923,000 ^{10/}
	b. Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	\$1,449,000
	Surcharge	\$170

^{1/} Annual fees will be assessed based on whether a licensee holds a valid license with the NRC which authorizes possession and use of radioactive material. Annual fees for licenses terminated or downgraded during the fiscal year and for new licenses issued or licenses whose scope increased during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate,

registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

^{2/} Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

^{3/} For FYs 1995 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

^{4/} A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

^{5/} Two licenses have been issued by NRC for land disposal of

special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

8/ Standardized spent fuel facilities, Part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

7/ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

8/ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

9/ Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

10/ This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

11/ No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is proposed for each category, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of \$55,600 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.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of \$22,800 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of \$170 has been added to each fee Category, except Categories 1E, 10.A., 11., 12., 13.A., 14., 15. and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the \$170 additional charge.

10. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

a) Reactors. The annual fee for a reactor (power or nonpower) licensee that is subject to fees under this part that is granted a license to operate on or after October 1 of a FY is prorated on the basis of the number of days remaining in the FY. Thereafter, the full fee is due and payable each subsequent FY. Licensee who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before the possession only license was issued or the license was terminated.

b) Materials licenses. The annual fee for a materials license that is subject to fees under this part that is granted a license on or after October 1 of a FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Similarly, licenses amended during the period from October 1 through March 31 to increase the scope will be assessed one-half the annual fee for the new category(ies) for that FY. Licenses amended on or after April 1 to increase the scope of the license will not be assessed an annual fee for the new category(ies) for that FY. Thereafter, the full fee is due and payable each subsequent FY. Licenses that are downgraded or terminated after October 1 of a FY will be prorated on the basis of when the application for downgrade or termination is filed with the NRC. Licenses for which applications for downgrade or termination are filed during the period October 1 through March

31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for downgrade or termination are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

11. In Section 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

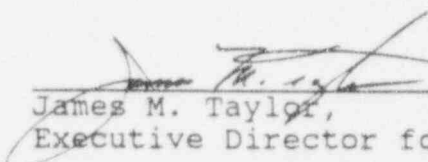
(b) For FY 1994 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1994 through 1998, annual fees in the amount of \$100,000 or more and described in the Federal Register Notice pursuant to § 171.13, must be paid in quarterly installments of

25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than \$100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 29th day of April,
1994.

For the Nuclear Regulatory Commission.



James M. Taylor,
Executive Director for Operations.

APPENDIX A TO THIS PROPOSED RULE
REGULATORY FLEXIBILITY ANALYSIS FOR THE
AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND
10 CFR PART 171 (ANNUAL FEES)

I. Background.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

- (1) A small business is a business with annual receipts of

\$3.5 million or less except private practice physicians for which the standard is annual receipts of \$1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of \$3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA-90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately \$445 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million and the amount to be collected in FY 1994 is approximately \$513 million.

To comply with OBRA-90, the Commission amended its fee

regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the proposed fees to be assessed for FY 1994. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, D.C. Cir. 1993). The FY 1993 LLW allocation method has been continued in the FY 1994 proposed rule.

II. Impact on small entities.

The comments received on the proposed FY 1991, FY 1992, and FY 1993 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these

materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991, FY 1992, and FY 1993 fee rules. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, and FY 1993 proposed fee rules indicated the following results if the proposed annual fees were not modified:

- Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

- Some firms would be forced to cancel their licenses.

One commenter, with receipts of less than \$500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

- Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

- Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past three years, approximately 2,600 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the \$3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

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To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992) and in the FY 1993 rule (58 FR 38666; July 20, 1993). The alternatives considered by the NRC can be summarized as follows.

- Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

- Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

- Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, and FY 1993 evaluation of the these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is proposing to continue for FY 1993, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1994, the NRC proposes to rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees, or any adjustments to these fees during the past year, do not have a significant impact on them. In issuing this proposed rule for FY 1994, the NRC concludes that the proposed materials

license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum small entity fee of \$1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1994 costs (\$33.3 million of the total \$38.6 million) attributable to them. Therefore, the NRC is proposing to continue, for FY 1994, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of \$1,800 for small entities, when added to the Part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992 and FY 1993, the NRC will continue the lower-tier small entity fee of \$400 for small entities with relatively low gross annual receipts for FY 1994. This lower-tier small entity fee was established in the final rule published in the Federal Register of April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA-90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of \$400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than \$250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

III. Summary.

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100

percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower tier small entity annual fee of \$400 for small businesses and non-profit organizations with gross annual receipts of less than \$250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, the FY 1992, and the FY 1993 fee rules in this proposed rule establishing the FY 1994 fees. Therefore, the analysis and conclusions established in the FY 1991, the FY 1992, and the FY 1993 rules remain valid for this proposed rule for FY 1994.

CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) LT to Sen Lieberman
2. TYPE OF DOCUMENT Correspondence Hearings (Qs/As)
3. DOCUMENT CONTROL Sensitive (NRC Only) Non-sensitive
4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)
_____ Congressional Committee
_____ Subcommittee
5. SUBJECT CODES
(a) _____
(b) _____
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6. SOURCE OF DOCUMENTS
(a) 5520 (document name _____)
(b) Scan- (c) _____ Attachments
(d) _____ Rekey (e) _____ Other _____
7. SYSTEM LOG DATES
(a) 6/7/94 Date OCA sent document to CCS
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8. COMMENTS