



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

AE 49-2  
PDR  
062

May 10, 1993

MEMORANDUM FOR: Donnie H. Grimsley, Director  
Division of Freedom of Information  
and Publication Services  
Office of Administration

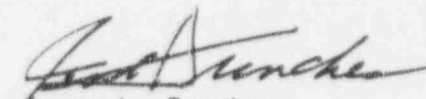
Trip Rothschild  
Deputy Assistant General Counsel for Legal  
Counsel, Legislation, and Special Projects  
Office of the General Counsel

FROM: Jesse L. Funches  
Deputy Controller  
Office of the Controller

SUBJECT: PUBLICATION OF THE FINAL FY 1993 FEE RULE

Enclosed is a copy of the schedule for publication of the final FY 1993 fee rule. As you can see, it is a very tight schedule but one that we must closely adhere to if the NRC is to collect 100 percent of the budget by September 30, 1993.

Please call me if you have any concerns about the accelerated schedule.

  
Jesse L. Funches  
Deputy Controller  
Office of the Controller

Enclosure:  
As stated

cc: P. Norry, ADM  
J. Cordes, OGC

License Fees  
Estimated Schedule  
FY 1993 Final Rule

4/23/93 Federal Register publishes proposed rule  
5/24/93 30 day comment period expires  
6/7/93 OGC requests Commission approval on Court Remand Issues  
6/14/93 Commission decides Remand Issues  
6/21/93 Draft final rule for OGC, ADM comment  
7/2/93 Final Rule to EDO  
7/9/93 EDO signs final rule  
7/16/93 Federal Register publishes final rule  
7/17/93 Bills issued  
8/16/93 Final Rule effective





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

OFFICE OF THE GENERAL COUNSEL  
SOLICITOR/LEGAL COUNSEL

TO

FROM

Name Jim HollowayName Michael RafkyLocation MNBB - OCTelephone Number 504-1606Fax Number 492-4934Number of Pages: Cover + 6

Verification Number

If any problems occur, contact:

Jim - Here is my first draft <sup>of</sup> ~~at~~ the Fed. Reg. notice on the remanded issues. I'm out of the office from 6/11 <sup>until</sup> 6/22, so give any comments you have during that time to TRIP or John. Have a fun week with the rule.

Jim -  
my comment  
is noted at  
cliff. No stamp  
written w/ them,  
but assume  
to edit w/ my  
I see it  
package.  
6/14

AE49-2  
PDR

FEDERAL REGISTER NOTICE - FY 93 ANNUAL FEE RULE**Taking Account of Licensees' Ability to Passthrough Fee Costs to Customers.**

**Comment.** A number of comments were received on the question of setting NRC annual fees in part on the basis of whether the licensee can pass through the costs of those fees to its customers. The NRC had proposed abandoning the passthrough concept, which it had used to justify its fee exemption for certain nonprofit educational institutions, on the grounds that to evaluate a licensee's passthrough ability was impossible and required expertise and information unavailable to the agency.

Many commenters supported the NRC's approach of not setting any license fees on the basis of passthrough, due to the difficulties inherent in its use [Entergy]. One stated that to do otherwise would be cumbersome and subjective, and cause fees to vary in response to changing market conditions [U of MT]. Another commenter noted that if passthrough were used, the exempted fees would almost certainly be paid by power reactors, which have trouble passing on their costs due to fee schedules established by public utility commissions [Penn. P&L]. One commenter stated that if foreign competition were the problem, Congress and not the NRC was the proper forum in which to seek relief for passthrough considerations [TU Electric].

Another group of commenters disagreed with the NRC's suggested approach, and argued that passthrough should be considered when devising a fee schedule. Many domestic uranium producers told the NRC that their industry cannot pass through costs to customers due to foreign competition, lower demand and long-term fixed price contracts [B&W, AMC, Rio Algom, Combustion Engineering]. Another commenter suggested that nuclear medicine departments should be eligible for exemption from fees due to passthrough considerations. They are often reimbursed for patient care by the Health Care Financing Administration, which does not take NRC fees into account [ACNP/BNM]. Commenters also claimed that, contrary to the NRC's stated position, the agency does have the necessary expertise to evaluate licensees' passthrough capacity and must do so under both CEBA-90 and the March 16 Court of Appeals decision [B&W, CE, AMC, Rio Algom, Allied-Signal]. One commenter stated that the NRC could simply request an affidavit from the licensee explaining how the licensee was unable to pass through its fee costs [Rio Algom].

Response. After carefully considering the comments received on this difficult issue, the Commission has decided to adopt its proposal not to use passthrough as a factor for any licensee when setting that licensee's fee schedule. The Commission recognizes that all licensees dislike paying user fees and that such fees must be taken into account as part of running a business or other enterprise. However, the Commission does not believe it has the expertise or information needed to undertake what is an impossible task. As it stated in the proposed rule, the Commission "is not a financial regulatory agency, and does not possess the knowledge or resources necessary to continuously evaluate purely business factors. Such an effort would require the hiring of financial specialists and . . . could [lead to] higher fees charged to licensees to pay for an expanded bureaucracy to determine if . . . licensee[s] can pass on the cost of [their] fees." 58 Fed. Reg. 21662-4 (1993).

Although in the final FY 1991 annual fee rule the Commission claimed that passthrough was a factor for justifying the exemption of nonprofit educational institutions from fees, that statement was incorrect. The Commission had no empirical data on which it based its belief that colleges and universities could not pass through fee costs. Rather, it acted purely on policy grounds, in an effort to aid nuclear-related education for the benefits it provides to the nuclear industry and society as a whole. The Commission now acknowledges that these institutions can compensate for the existence of NRC fees, by means of higher tuition (prices) or budget cuts, in the same manner as profit-oriented licensees.

The Commission disagrees with those commenters who claim the NRC must set fees at least in part on the basis of passthrough considerations. In its decision, the D.C. Circuit clearly stated that "[t]he statutory language and legislative history [of OBRA-90] do not, in our view, add up to an inexorable mandate to protect classes of licensees with limited ability to pass fees forward." Allied-Signal at 5. The court went on to say that "[b]ecause [price] elasticities are typically hard to discover with much confidence, the Commission's refusal to read [OBRA-90] as a rigid mandate to do so is not only understandable but reasonable." Allied-Signal at 6-7.

Therefore, the Commission believes that there is no licensee for whom it can set fees using passthrough considerations "with reasonable accuracy and at reasonable cost." If the Commission were to attempt such an endeavor, it would require a comprehensive, on-going audit of that licensee's business and the industry of which it was a part. The Commission would have to examine tax returns, financial statements, and other potentially confidential data that a licensee might be loath to reveal. And even if the

Commission could obtain all the necessary information, it does not have the expertise to accurately evaluate the information in order to make a passthrough determination. If the Commission cannot do this for one licensee, it certainly cannot do it for nearly 7,000. Because this is the case, the Commission will not base any exemptions on the alleged inability of a licensee to pass through fee costs to its customers. This policy applies to all licensees, including those companies with long-term, fixed price contracts. In that regard, the Commission notes that companies who do business using such contracts are continuously liable for changes in the tax codes and other Federal and State regulations that occur subsequent to the commencement of these contracts. The Commission believes the current situation is no different. The Commission is sympathetic to licensees' complaints on the passthrough issue, but believes that it has no other choice but to pursue the course of action it has chosen.

#### Fee Exemption for Nonprofit Educational Institutions.

Comment. The Commission received a smaller than expected number of comments on the question of continuing the exemption from fees for nonprofit educational institutions. The Commission solicited comments from colleges and universities, and other interested parties, on whether to continue this exemption and on what grounds. The Commission had proposed continuing the exemption solely on the grounds that nuclear-related education provides a benefit both to the nuclear industry and society at large. See Final FY 1991 Rule, 56 FR 31477 (1991). As a result of the court decision, the Commission also requested comments on the court's suggestion that education might provide "externalized benefits that cannot be captured in tuition or other market prices." Allied-Signal at 8. Finally, the Commission solicited comments on the option of doing away with the exemption entirely.

Many of the comments received on this issue supported retaining the exemption for nonprofit educational institutions. These commenters, mostly colleges and universities, asserted that they provided a great benefit to society through nuclear-related education, and that they would be hardpressed to sustain their programs in the face of newly imposed fees. Some claimed that if the exemption were removed, they would be forced to shut down or drastically curtail their nuclear education programs. One commenter suggested that if fees were to be charged, that it be done on a graduated basis, presumably to lessen the burden on certain licensees [Wright State University]. Another made the point that fees should not be charged to programs receiving support from the Federal government in other ways [UVA]. Some commenters urged not only keeping



the exemption in place, but expanding it to include museums and other nonprofit institutes [Cleveland Museum of Art, Woods Hole]. No commenter, however, addressed in any meaningful detail the "externalized benefits" point made by the court in its opinion.

Other commenters instead argued that the exemption should be abandoned. A nonprofit institute asserted that if it had to pay fees to the NRC, others should as well. It believed that if all nonprofit educational institutions paid "their fair share," the fee burden on those institutions would be lowered [Dana-Farber Cancer Institute]. Similarly, a nonprofit hospital called for ending the educational exemption, to create a more equitable fee schedule. The commenter also believed that the exemption penalized those nonprofit hospitals competing for scarce research funds and limited numbers of patients [West Penn Hospital]. Another commenter, a utility, made the argument that the NRC should only be concerned with guarding the public health and safety, not subsidizing colleges and universities. It too called for an end to the exemption [Duke Power]. And a major fuel facility asserted that the NRC had no discretion to exempt colleges and universities from paying fees, and that the exemption should be discontinued [Allied-Signal].

**Response.** Although the Commission had proposed retaining the exemption for nonprofit educational institutions, it does not believe it can now do so in the face of both the court decision and the disappointing number and quality of comments received on this aspect of the rule.

The Commission had hoped that those colleges and universities benefitting from the exemption would take up the Commission's invitation to discuss and elaborate upon the "externalized benefits" point made by the court. Unfortunately, they did not do so. As a result, the Commission does not believe that it has an adequate administrative record on which to base a continued exemption of nonprofit educational institutions. This is especially true in light of the court decision, which forced the Commission to acknowledge the serious weakness of, and abandon, the passthrough argument formerly made on behalf of these institutions. As the Commission has stated above, that argument was not based on empirical data and cannot withstand close scrutiny. Without either the passthrough rationale or persuasive comments from those who are the subject of the exemption, the Commission has no choice but to charge colleges and universities fees appropriate to their status as licensees.

The Commission does not believe a compelling argument can be made that education produces benefits not provided by any other type of licensee. As the comments and court decision indicated, many other licensees can claim that they provide

important benefits to society that are worthy of fee exemptions. In particular, the Commission would be hardpressed to explain why nonprofit hospitals, and nuclear medicine in general, do not provide societal benefits that are the equal of any provided by educational institutions. And without such a means of differentiating these groups of licensees from one another, any rationale for singling out education for fee-exempt status would almost surely fail if challenged. The Commission acknowledges the seeming paradox in charging fees to a program that receives support from other agencies of the Federal government. However, it believes that it has no choice, given 100 percent recovery requirements and fairness and equity, but to charge all licensees whenever possible. For instance, the NRC levies both annual and user fees on other nonprofit, tax-exempt entities such as hospitals, museums and institutes. Furthermore, the NRC also directly charges annual fees to other Federal government agencies such as the Veterans' Administration, the National Institutes of Health and the armed forces. Charging annual fees to colleges and universities is consistent with the Commission's preferred approach to fee recovery.

The Commission was also struck by the number of comments that attacked the educational exemption and urged its abandonment. Because those arguments were made by organizations such as hospitals, utilities and fuel facilities that presumably benefit from an educated nuclear workforce, the Commission read these comments as an indication that the assumed beneficiaries of education did not view it quite as positively as the Commission had believed. This in turn strengthened the Commission's view that simply citing the benefits of education to society would not be enough to uphold the exemption absent other compelling evidence. Because no such evidence was provided by commenters, the Commission's only course of action is clearly to eliminate the educational exemption.

~~The Commission would like to make clear that it views the abolition of the educational exemption with great sorrow. The Commission believes nuclear-related education is deserving of support whenever possible, not least because it results in safer use of nuclear power and allows the NRC and other regulatory agencies to recruit and hire a more educated and talented group of employees. The Commission also reminds educational licensees that they, like all licensees, can apply for exemptions from the fees, though such requests will not be granted absent fulfillment of the stated exemption criteria in the rule.~~

On a more practical note, the Commission has concluded that by eliminating the exemption for past years, it must refund the money paid by those licensees charged fees that would otherwise have been paid by the colleges and universities.

*Recommend  
will delete  
this. No  
need to give  
the non-educational  
comment.*

As a result, the Commission will be refunding to the power reactor community those fees paid by them to cover the annual fees of the exempted educational institutions. Because the Part 170 IOAA exemption was not challenged or ruled upon in the ~~Allied~~ <sup>Final</sup> case, money collected from the reactors under that exemption will not be refunded. For purposes of consistency, however, the Commission intends in the near future to abolish this exemption as well. It is not doing so at this time because it did not offer this option for public comment in the FY 1993 proposed rule.

7590-01  
[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AE

FY 1991 and 1992 Final Rule Implementing  
the U.S. Court of Appeals Decision and  
Revision of Fee Schedules; 100% Fee Recovery, FY 1993

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The 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) 1993 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1993 is approximately \$518.9 million.

In addition, the NRC is implementing the March 16, 1993, U.S. Court of Appeals for the District of Columbia Circuit decision remanding to the NRC portions of the FY 1991 annual fee rule. The remanded portions pertain to: (1) the NRC's decision to exempt nonprofit educational institutions, but not other enterprises, on the ground in part that educational institutions are unable to pass through the costs of annual fees to their customers; and (2) the Commission's decision to allocate generic



costs associated with low-level waste (LLW) disposal by groups of licensees, rather than by individual licensee. The NRC in this final rule has revoked the exemption from annual fees for nonprofit educational institutions and has changed its method of allocating the budgeted cost for low level waste activities. The NRC believes these approaches are consistent with the court's decision. Because the court's decision was also extended to cover the NRC's FY 1992 annual fee rule by subsequent Court order, this final rule addresses the FY 1992 rule as well.

EFFECTIVE DATE: (30 days after publication)

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. Response to Comments.
- III. Final Action -- Changes Included In Final Rule.
- IV. Section-by-Section Analysis.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.
- IX. 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. Public Law 101-576, the Chief Financial Officers Act of 1990 (CFO Act), enacted November 15, 1990, requires that the NRC perform a biennial review of its fees and other charges imposed by the agency and revise those charges to reflect costs incurred in providing those services.

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 are generally for 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 three 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 method for determining 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 and the U.S. Court of Appeals for the District of Columbia Circuit decided the lawsuits on March 16, 1993. The Court decision was also extended to cover the FY 1992 fee rule by subsequent court order. The Court case and the NRC's response to the issues remanded by the court are discussed in Section II of this final rule.

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 adjusted 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), the NRC published a final rule 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. The basic methodology used in the FY 1992 final rule 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).

Section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees under Section 6101(c) of OBRA-90, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress that the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC published for public comment a separate notice in the Federal Register on April 19, 1993 (58 FR 21116-21121). The 90-day public comment period for this notice expires on July 19, 1993.

On April 23, 1993 (58 FR 21662), the NRC published the proposed rule that presented the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1993 less the appropriation received from the NWF. The basic methodology used in the proposed rule 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 set forth in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691). The NRC placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L Street, NW, Washington, D.C., in the lower level of the Gelman building. Workpapers relating to this final rule will also be placed in the Public Document Room.

## II. Responses to comments.

The NRC received \_\_\_\_ public comments by the close of the comment period on May 24, 1993, and an additional \_\_\_\_ comments by the close of business on June \_\_\_, 1993. These comments were evaluated in the development of this final rule.

Of the \_\_\_\_ comments, \_\_\_\_ were from power reactor licensees or their representatives and \_\_\_\_ were from persons concerned with other types of licenses, including \_\_\_\_ from nonprofit educational institutions or their representatives. Copies of all comment letters received are available for inspection in the NRC Public Document Room, 2120 L Street, NW (lower level) Washington,

D.C.

Many of the comments were similar in nature. For evaluation purposes, these comments have been divided into two groups. The first group deals with the two remand issues of the U.S. Court of Appeals for the District of Columbia Circuit case decided on March 16, 1993. The second group deals with the remaining comments on the FY 1993 proposed rule. They are as follows:

A. Comments Regarding U.S. Court of Appeals for the District of Columbia Circuit Remand Decision -- FY 1991 -- FY 1993 Fee Schedules.

1. Taking Account of Licensees' Ability to Passthrough Fee Costs to Customers.

Comment. A number of comments were received on the question of setting NRC annual fees in part on the basis of whether the licensee can pass through the costs of those fees to its customers. The NRC had proposed abandoning the passthrough concept, which it had used to justify its fee exemption for certain nonprofit educational institutions, on the grounds that to evaluate a licensee's passthrough ability was impossible and required expertise and information unavailable to the agency.

Many commenters supported the NRC's approach of not setting any license fees on the basis of passthrough, due to the difficulties inherent in its use [Entergy]. One stated that to do otherwise would be cumbersome and subjective, and cause fees to vary in response to changing market conditions [U of MT]. Another commenter noted that if passthrough were used, the exempted fees would almost certainly be paid by power



reactors, which have trouble passing on their costs due to fee schedules established by public utility commissions [Penn. P&L]. One commenter stated that if foreign competition were the problem, Congress and not the NRC was the proper forum in which to seek relief for passthrough considerations [TU Electric].

Another group of commenters disagreed with the NRC's suggested approach, and argued that passthrough should be considered when devising a fee schedule. Many domestic uranium producers told the NRC that their industry cannot pass through costs to customers due to foreign competition, lower demand and long-term fixed price contracts [B&W, AMC, Rio Algom, Combustion Engineering]. Another commenter suggested that nuclear medicine departments should be eligible for exemption from fees due to passthrough considerations. They are often reimbursed for patient care by the Health Care Financing Administration, which does not take NRC fees into account [ACNP/SNM]. Commenters also claimed that, contrary to the NRC's stated position, the agency does have the necessary expertise to evaluate licensees' passthrough capacity and must do so under both OBRA-90 and the March 16, 1993, Court of Appeals decision [B&W, CE, AMC, Rio Algom, Allied-Signal]. One commenter stated that the NRC could simply request an affidavit from the licensee explaining how the licensee was unable to pass through its fee costs [Rio Algom].

Response. After carefully considering the comments received on this difficult issue, the Commission has decided to adopt its proposal not to use passthrough as a factor for any licensee when setting that licensee's fee schedule. The Commission recognizes that all licensees dislike paying user fees and that such fees

must be taken into account as part of running a business or other enterprise. However, the Commission does not believe it has the expertise or information needed to undertake what is an impossible task. As it stated in the proposed rule, the Commission "is not a financial regulatory agency, and does not possess the knowledge or resources necessary to continuously evaluate purely business factors. Such an effort would require the hiring of financial specialists and . . . could [lead to] higher fees charged to licensees to pay for an expanded bureaucracy to determine if . . . licensee[s] can pass on the cost of [their] fees." 58 Fed. Reg. 21662-4 (1993).

Although in the final FY 1991 annual fee rule the Commission claimed that passthrough was a factor for justifying the exemption of nonprofit educational institutions from fees, the Commission had no empirical data on which it based its belief that colleges and universities could not pass through fee costs. Rather, it acted purely on policy grounds, in an effort to aid nuclear-related education for the benefits it provides to the nuclear industry and society as a whole. The Commission now acknowledges that these institutions can compensate for the existence of NRC fees, by means of higher tuition (prices) or budget cuts, in the same manner as profit-oriented licensees.

The Commission disagrees with those commenters who claim the NRC must set fees at least in part on the basis of passthrough considerations. In its decision, the D.C. Circuit clearly stated that "[t]he statutory language and legislative history [of OBRA-90] do not, in our view, add up to an inexorable mandate to protect classes of licensees with limited ability to pass fees



forward." Allied-Signal at 5. The court went on to say that "[b]ecause [price] elasticities are typically hard to discover with much confidence, the Commission's refusal to read [OBRA-90] as a rigid mandate to do so is not only understandable but reasonable." Allied-Signal at 6-7.

Therefore, the Commission believes that there is no licensee for whom it can set fees using passthrough considerations "with reasonable accuracy and at reasonable cost." If the Commission were to attempt such an endeavor, it would require a comprehensive, ongoing audit of that licensee's business and the industry of which it was a part. The Commission would have to examine tax returns, financial statements, and other potentially confidential data that a licensee might be loath to reveal. And even if the Commission could obtain all the necessary information, it does not have the expertise to accurately evaluate the information in order to make a passthrough determination. If the Commission cannot do this for one licensee, it certainly cannot do it for nearly 7,000. Because this is the case, the Commission will not establish fees or base any exemptions on the alleged inability of a licensee to pass through fee costs to its customers. This policy applies to all licensees, including those companies with long-term, fixed price contracts. In that regard, the Commission notes that companies who do business using such contracts are continuously liable for changes in the tax codes and other Federal and State regulations that occur subsequent to the commencement of these contracts. The Commission believes the current situation is no different. The Commission is sympathetic to licensees' complaints on the passthrough

issue, but believes that it has no other choice but to pursue the course of action it has chosen.

2. Fee Exemption for Nonprofit Educational Institutions.

Comment. The Commission received a smaller than expected number of comments on the question of continuing the exemption from fees for nonprofit educational institutions. The Commission solicited comments from colleges and universities, and other interested parties, on whether to continue this exemption and on what grounds. The Commission had proposed continuing the exemption solely on the grounds that nuclear-related education provides a benefit both to the nuclear industry and society at large. See Final FY 1991 Rule, 56 FR 31477 (1991). As a result of the court decision, the Commission also requested comments on the court's suggestion that education might provide "externalized benefits that cannot be captured in tuition or other market prices." Allied-Signal at 8. Finally, the Commission solicited comments on the option of doing away with the exemption entirely.

Many of the comments received on this issue supported retaining the exemption for nonprofit educational institutions. These commenters, mostly colleges and universities, asserted that they provide a great benefit to society through nuclear-related education, and that they would be hardpressed to sustain their programs in the face of newly imposed fees. Some claimed that if the exemption were removed, they would be forced to shut down or drastically curtail their nuclear education programs. One commenter suggested that if fees were to be charged, that it be done on a graduated basis, presumably to lessen the burden on

certain licensees [Wright State University]. Another made the point that fees should not be charged to programs receiving support from the Federal government in other ways [UVA]. Some commenters urged not only keeping the exemption in place, but expanding it to include museums and other nonprofit institutes [Cleveland Museum of Art, Marine Biological Laboratory]. No commenter, however, addressed in any meaningful detail the "externalized benefits" point made by the court in its opinion.

Other commenters instead argued that the exemption should be abandoned. A nonprofit institute asserted that if it had to pay fees to the NRC, others should as well. It believed that if all nonprofit educational institutions paid "their fair share," the fee burden on those institutions would be lowered [Dana-Farber Cancer Institute]. Similarly, a nonprofit hospital called for ending the educational exemption, to create a more equitable fee schedule. The commenter also believed that the exemption penalized those nonprofit hospitals competing for scarce research funds and limited numbers of patients [West Penn Hospital]. Another commenter, a utility, made the argument that the NRC should only be concerned with guarding the public health and safety, not subsidizing colleges and universities. It too called for an end to the exemption [Duke Power]. And a major fuel facility asserted that the NRC had no discretion to exempt colleges and universities from paying fees, and that the exemption should be discontinued [Allied-Signal].

Response. Although the Commission had proposed retaining the exemption for nonprofit educational institutions, it does not believe it can now do so in

the face of both the court decision and the disappointing number and quality of comments received on this aspect of the rule.

Although the Commission had expected that those colleges and universities benefitting from the exemption would take up the Commission's invitation to discuss and elaborate upon the "externalized benefits" point made by the court, they did not do so. As a result, the Commission does not believe that it has an adequate administrative record on which to base a continued exemption of nonprofit educational institutions. This is especially true in light of the court decision, which forced the Commission to acknowledge the serious weakness of, and abandon, the passthrough argument formerly made on behalf of these institutions. As the Commission has stated above, that argument was not based on empirical data and cannot withstand close scrutiny. Without either the passthrough rationale or persuasive comments from those who are the subject of the exemption, the Commission has no choice but to charge colleges and universities fees appropriate to their status as licensees.

The Commission does not believe a compelling argument can be made that education produces benefits not provided by any other type of licensee. As the comments and court decision indicated, many other licensees can claim that they provide important benefits to society that are worthy of fee exemptions. In particular, the Commission would be hardpressed to explain why nonprofit hospitals, and nuclear medicine in general, do not provide societal benefits that are the equal of any provided by educational institutions. And without such a means of differentiating these

groups of licensees from one another, any rationale for singling out education for fee-exempt status would almost surely fail if challenged. The Commission acknowledges the seeming paradox in charging fees to a program that receives support from other agencies of the Federal government. However, it believes that it has no choice, given 100 percent recovery requirements and fairness and equity, but to charge all licensees whenever possible. For instance, the NRC levies both annual and user fees on other nonprofit, tax-exempt entities such as hospitals, museums and institutes. Furthermore, the NRC also directly charges annual fees to other Federal government agencies such as the Veterans' Administration, the National Institutes of Health and the armed forces. Charging annual fees to colleges and universities is consistent with the Commission's preferred approach to fee recovery.

The Commission was also struck by the number of comments that attacked the educational exemption and urged its abandonment. Because those arguments were made by organizations such as hospitals, utilities and fuel facilities that presumably benefit from an educated nuclear workforce, the Commission read these comments as an indication that the assumed beneficiaries of education did not view it quite as positively as the Commission had believed. This in turn strengthened the Commission's view that simply citing the benefits of education to society would not be enough to uphold the exemption absent other compelling evidence. Because no such evidence was provided by commenters, the Commission's only course of action is clearly to eliminate the educational exemption.



On a more practical note, the Commission has concluded that by eliminating the exemption for past years, it must refund the money paid by those licensees charged fees that would otherwise have been paid by the colleges and universities. As a result, the Commission will be refunding to power reactor licensees those fees paid by them in FY 1991 and FY 1992 to cover the annual fees of the exempted educational institutions. Because the Part 170 IOAA exemption was not challenged or ruled upon in the Allied-Signal case, money collected from the reactors under that exemption will not be refunded. For purposes of consistency, however, the Commission intends in the near future to abolish this exemption as well through notice and comment rulemaking. It is not doing so at this time because it did not offer this option for public comment in the FY 1993 proposed rule.

3. Allocation of Low-Level Waste Costs.

Comment. Comments were received in support of each of the four alternatives for allocating Low Level Waste (LLW) costs that were included in the proposed rule. Some commenters also recommended variations of the four basic alternatives. The alternatives were:

- (1) Assess all licensees that generate LLW a uniform annual fee.
- (2) Allocate the LLW budgeted cost based on the amount of LLW disposed of by groups of licensees and assess each licensee in a group the same annual fee as was done in the FY 1991 and FY 1992 rules.
- (3) Assess each licensee an annual fee based on the amount of waste generated/disposed by the

individual licensee, as was suggested by Allied-Signal and by the court.

- (4) Base the LLW annual fees on curies generated or disposed of.

Commenters that supported Alternative 1 (uniform fee) argued primarily that the real benefit of LLW disposal is merely the availability of such services and classes of generators have a need for this availability. In support of this argument, commenters noted that if one class of licensee (e.g., power reactors) did not exist, there would still be the same need for a regulatory framework for future disposal, and the need is independent of the amount of waste being generated today. The cost relationship to the volume of waste disposal, according to these commenters, is a contractual matter best handled between the vendor and customer. That is, the benefit will be reflected in the fees that those licensees will be required to pay to the vendors when disposing of their LLW. Most of the commenters that supported alternative 1, believed that Alternatives 3 and 4 were not acceptable because of the problems associated with the equitable distribution of the annual fee to all applicable licensees. Commenters noted that the inequities in this approach are that some licensees are storing, either by choice or regulation, their LLW. Some commenters believe that Alternative 2 is not equitable, given the uniform need among all classes of LLW generators for a regulatory framework for future LLW disposal.

Several commenters supported Alternative 2 (uniform fee by groups of licensees) as the best and fairest method

among the four alternatives. One commenter stated that this is the best alternative in terms of its fairness to licensees of different sizes and different types of waste, while not being too cumbersome to effectively implement. They indicated that, although not exact by specific licensee, Alternative 2 provides enough information to reasonably provide an equitable method for allocating fees at the present time among those who will derive future benefits from regulatory services associated with low level waste. Commenters noted that the current volume of LLW disposed of by each class is the best gross indicator of the relative future benefit of LLW disposal sites to licensees. Other commenters preferred Alternative 2 because it is the clearest and most predictable to the waste generator and easiest for the NRC to administer. These commenters also noted that calculating the annual LLW surcharge based on individual licensees' current volume of waste (Alternative 3) would be administratively burdensome and might not bear a close relationship to the amount of waste those licensees will generate in the future.

Several commenters supported Alternatives 3 which would base the LLW surcharge on the amount of waste generated or disposed by each individual licensee. These commenters believe that Alternative 3 should be adopted, since the NRC has not provided sufficient reasons to deviate from the approach suggested in the decision by the U.S. Court of Appeals. They state that the other three alternatives are unfair.

One commenter supported Alternative 4 that of basing the LLW surcharge on the curies of waste generated. Other commenters, however, indicated that curies generated is not a good indicator of the regulatory



benefits of the NRC regulatory program. One commenter suggested a combination of Alternatives 1, 3 and 4 such that the fee assessment for LLW would include a minimum fee for all users with the largest portion of the fee being calculated based on volume generated with an additional assessment for activity (Class B and C waste) which would require stricter long term monitoring at any storage facility.

Response. Based on an evaluation of the comments, the Commission concludes that on balance a combination of Alternative 1 and 2 provides a fair and equitable allocation of the NRC LLW costs to the various NRC licensees. The Commission has concluded that there should be two LLW surcharges -- one for large waste generators and another for small waste generators. This conclusion reflects (1) the purpose of NRC activities whose costs are included in the surcharge and (2) existing data on which to base the fees.

The purpose of FY 1991 - FY 1993 LLW waste activities is to implement Low Level Radioactive Waste Policy Amendments Act of 1985, and the Atomic Energy Act, which requires the NRC to perform certain generic activities. These activities include developing rules, policies and guidance, performing research, and providing advice and consultation of LLW compacts and Agreement States who will license some of the future LLW disposal sites. The budgeted costs for these types of generic activities are generally recovered in annual fees from the class of licensees to whom the activities directly relate. (For example, reactor research is recovered from reactor licensees, and guidance and rule development for regulation of uranium producers is recovered from uranium recovery licensees.) However,

for LLW generic activities, there is no disposal site licensed by the NRC from whom to recover the generic budgeted costs that must be incurred.<sup>1</sup> Since there is no LLW disposal site licensee, these costs must be allocated to other NRC licensees in order to recover 100% of the NRC budget as required by ORBR-90. In addition, the LLW costs budgeted by NRC in FY 1991, FY 1992 and FY 1993 are not for the wastes being disposed during these years or prior years, but are devoted to creating the regulatory framework for disposal of LLW at some future date.<sup>2</sup> In fact, the sites where LLW was disposed of in FY 1991-1993 are licensed and regulated by Agreement States, not the NRC.

Given the 100 percent budget recovery requirement of OBRA-90, and the fact that there are no NRC LLW licensees from whom to recover FY 1991-1993 budgeted costs for NRC generic activities, the basic question is how should NRC allocate these costs. Congress spoke briefly to this issue in developing OBRA-90 by recognizing that certain expenses cannot be attributed directly either to an individual licensee or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge, even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in

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<sup>1</sup>There are organizations that hold a NRC license for the disposal of Special Nuclear Material (SNM). The LLW at issue is not SNM, but other byproduct and source materials.

<sup>2</sup>In the FY 1991 rule, the NRC indicated that "once the NRC issues a license to dispose of byproduct LLW, the Commission will reconsider the assessment of generic costs attributable to LLW disposal activities" (56 FR 31487; July 10, 1991).

its discretion, determines can fairly, equitably, and practicably contribute to their payment. 1356 Cong Rec. at H12692, 3.

Consistent with the Congressional guidance, the Commission believes that the LLW surcharge should be allocated based on the fundamental concept that all classes of NRC licensees which generate a substantial amount of LLW should be assessed annual fees to cover the agency's generic LLW costs. Each of the alternatives in the proposed rule which were endorsed by various commenters, supports, to varying degrees, this allocation concept and provides various degrees of fairness and equity because of available data and the inherent limitations of the method allocation itself.

Alternative 4 had little support from the commenters and the Commission believes is the least preferable alternative since volume is at least as good of an indicator, probably a better indicator, of the benefits from the NRC generic low level waste activities. In addition, volume is more practical to implement.

Alternative 3 and 4, reallocating LLW disposal costs on an individual rather than class basis, appears fairer than the current system, since each licensee would pay a fee more precisely tied to the amount of waste it currently generates or disposes of. The Commission, however, sees significant problems in an individualized approach, given the data the NRC has for FYs 1991-1993. As indicated by some of the commenters, the NRC has data on the amount of LLW disposed by individual licensee. However, currently the NRC does not have <sup>data on</sup> the amount of waste generated for each of the over 1,000

individual licensees that generate LLW.<sup>3</sup> The Commission also believes that it is not practical, and probably not even possible to retroactively create the amount of waste generated by each individual licensee for FY 1993 and prior years since the time to capture such data has passed for many licensees.

The Commission has concluded that using available individual waste disposal data would result in grossly unfair annual fees since some licensees that generate LLW would not pay any fees. This would occur because some licensees are prohibited from disposing of their waste or because they choose not to do so for the near term. Increasingly, for example, licensees (such as those in Michigan) cannot dispose of their waste because of restrictions in the LLW Policy Act.<sup>4</sup> Thus, given the current situation with LLW disposal in the U.S., basing fees on individual disposal data could, in the Commission's view, result in some licensees paying the full generic costs of future LLW licensing, while

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<sup>3</sup>The Commission is evaluating whether on a programmatic basis, it is beneficial to obtain individual LLW generation data. If the acquisition of such data would be otherwise beneficial, then the Commission would evaluate whether such data could form the basis for a revised approach for assessing the LLW surcharge.

<sup>4</sup>The Secretary of Energy stated in his "1991 Annual Report on Low-Level Waste Management Progress" that:

As States continued to work toward providing management and disposal capability for their low-level radioactive waste, they also grappled with the possibility of no longer having access to the low-level radioactive waste disposal facilities now operating in Nevada, South Carolina, and Washington after December 31, 1992. The Act allows those three sites to close at the end of 1992. Should this occur, on January 1, 1993, as much as 90 percent of the volume of the Nation's low-level radioactive waste not disposed by that date could be required to be stored at the point of generation, which would raise numerous health, safety, financial, and legal issues.

all licensees that generate LLW will benefit from the NRC generic LLW activities. In addition to being unfair, using individual disposal data would result in the significant administrative burden of "translating" raw and coded disposal data on computer printouts into usable licensee-by-licensee bills.

Some commenters point out that although the use of disposal data could result in some licensees paying no fees, they would be charged disproportionately high annual fees in the future when they do dispose of their LLW. This is not necessarily true, since many of the ongoing LLW generic activities are not recurring-type activities.<sup>5</sup>

Alternative 2 would eliminate the major negative associated with Alternative 3. That is, each licensee that generates waste would pay an annual fee to recover the NRC costs that are necessary to establish and maintain a regulatory program for LLW disposal, using the average amount of waste disposed per licensee as a proxy for generation. This has drawbacks for those classes with a relatively small number of licensees, such as the fuel facilities. As several commenters noted, Alternative 1 is consistent with the purpose of the FY 1991-1993 LLW activities. However, the guidance from the Congress of fairness and equity dictates that the NRC not charge the same fee for those groups of licensees that are likely to generate a

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<sup>5</sup>For example, once the research, performance assessment, or development of rules and regulatory guides is completed, the staff does not expect to perform that work again in the future. Therefore if licensees pay in the future they would not be required to pay for these generic regulatory costs.



significantly different amount of LLW. Because the NRC does not have sufficient data on LLW generated to make a refined differentiation by individual licensee or small groups, the Commission believes that this can be accomplished by creating two groups--large <sup>generators</sup> ~~generators~~ and small generators. The large generators would be comprised of power reactors and large fuel facilities. The amount of the costs allocated to the two groups would be based on the historical average of the amount of waste disposed. Within these two groups, each licensee would pay the same LLW fee (surcharge). 2

B. Other Comments.

1. Comment. Many commenters stated that they were shocked and outraged at the size of the fee increases, particularly the 10 CFR Part 170 inspection fees for well logging, radiography and broad scope medical programs. These commenters indicated that the fees are <sup>grossly excessive</sup> ~~punitive~~ and self defeating and that they cannot afford to pay them. Other commenters stated the increased inspection fees are designed to circumvent the small entity two tiered annual fee system in 10 CFR Part 171 which allows small entities to either pay an annual fee of \$1,800 or \$400 depending on the gross annual receipts of the licensee. Other comments suggested that the NRC should also apply the small entity criteria to 10 CFR Part 170 fees as well while another commenter suggested that all small entities be granted an exemption from fees. Several, commenters stated that the proposed fees favor major service companies with a large capital base and will destroy small companies.

A significant number of small gauge users commented that they are unable to do the testing required to build highways and roads for Federal and State governments and urge a reconsideration of the fee structure

Several ~~commenters~~ <sup>NRC</sup> commenters the increase in fee is an inducement for States to raise their regulatory fees

Response. The NRC discussed the reasons for the 10 CFR Part 170 inspection fee increases in the proposed rule indicating that a distribution of the changes to the inspection fees shows that inspection fees would increase by at least 100 percent for 19 percent of the licenses. The NRC pointed out that the largest increases would be for inspections conducted of those licenses authorizing byproduct material for 1) broad scope processing or manufacturing of items for commercial distribution (fee category 3A); 2) broad scope research and development (fee category 3L); and 3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses would have increases of more than 50 percent. The NRC stated that the primary reason for these relatively large increases is that the average number of hours on which inspection fees are based has not been updated since 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional hours used in the current fee schedule for inspections is outdated because during the past eight years, the NRC's inspection program has changed significantly. In some program areas, for example, the NRC has emphasized in recent years, that based on historical enforcement actions, inspections be more thorough and in-depth so as to improve public health and safety. (58 FR 21669-21670).

These inspection fees must be updated consistent with the Chief Financial Officers Act (CFO) requirement that NRC conduct a review, on a biennial basis, of fees and other charges imposed by the Agency for its services and revise those

charges to reflect the costs incurred in providing the services. Therefore, the fees established by NRC are not designed to circumvent the small entity annual fees in 10 CFR Part 171 but rather are designed to recover the NRC's costs of processing individual applications and conducting individual inspections of licensed programs under 10 CFR Part 170.

2. Comment. Commenters in the fuel facilities class of licensees indicated that a further explanation is needed of the significant increases in their fees. They pointed out that the annual fee for a high enriched facility has increased from \$2.3 million in FY 1992 to \$3.3 million in FY 1993. Similarly, the annual fee from a low enriched uranium facility increased from \$838,258 in FY 1992 to 1,319,000 in FY 1993. The commenters questioned whether or not the increases were due to the increased staff required to provide oversight of the newly formed United States Enrichment Corporation (USEC).

Response. The NRC believes that it has provided sufficient information concerning the FY 1993 budget to allow effective evaluation and constructive comment concerning the budgeted costs for fuel facility licensees. In Part III, the Section-by-Section Analysis, Table VI of the proposed rule published April 23, 1993 (58 FR 21675), the NRC provided a detailed explanation of the FY 1993 budgeted costs for the fuel facility class of licensees. These resources are determined by the NRC and approved by the Congress as those necessary to carry out the health and



safety activities for this class of licensees. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates, fiscal years 1993-1994" (NUREG-1100, Volume \_\_), which is available to the public. The basis for the NRC resources are thoroughly addressed by the Congress through hearings and written questions and answers. The FY 1993 NRC hearings are documented, for example, in the publication Energy and Water Development Appropriations for FY 1993 --X Hearings before a Subcommittee on Appropriations, House of Representatives, One Hundred Second Congress, Second Session, Part 6. The resources resulting from this review and decision process are those necessary for NRC to implement its statutory responsibilities. Questions relating to the NRC budget approval process were also addressed in the final rules published on July 10, 1991 (56 FR 31482) and July 23, 1992 (\_\_ FR \_\_\_\_). Given the increase in the budget for the fuel cycle class of licensees, it is necessary to increase the fees to recover the cost for these activities in accordance with OBRA-90. e

3. Comment. Another fuel facility licensee indicated that based on the Court's decision to grant Combustion Engineering an exemption from fees for one of its two low enriched uranium plants located in Hemite, Missouri and Windsor, Connecticut then it too deserves to be considered for an exemption because it is not operationally equivalent to the plants run by the full scope fuel fabricators since it purchases finished fuel pellets from another company and loads them into

fuel rods for assembly into fuel elements. Therefore, the commenter requests that the NRC reconsider the implication of the Court's holding with respect to the disproportionate allocation of its costs under 10 CFR 171.11(d), especially as the allocation of these costs adversely impacts the licensee.

Response. The D.C. Circuit Court of Appeals decision of March 16, 1993, directed the NRC to grant an exemption from annual fees to Combustion Engineering (CE) for one of its two low enriched uranium facilities. The NRC had previously denied the exemption request from CE. If licensees feel that based on the circumstances of their particular situation that they can make a strong case to the NRC for an exemption from the FY 1993 annual fees then they should do so. The NRC will consider such requests for exemption under the provisions of 10 CFR 171.11(d). In accordance with 10 CFR Part 171.11(b), such requests for exemption must be filed within 90 days from the effective date of this final rule. The filing of an exemption request does not extend the date on which the bill is payable. Only the timely payment in full ensures avoidance of interest and penalty charges. If a particular or full exemption is granted, any overpayment will be refunded.

4. Comment. Some uranium recovery licensees questioned and requested clarification concerning the purpose of the new categories in 10 CFR Parts 170.31 and 171.16(d) (Category 4D) as many mill tailings facilities are already licensed to accept

byproduct material for possession and disposal of byproduct material pursuant to NRC's Criteria 2 of 10 CFR Part 40, Appendix A. These licensees believe that mill tailings facilities should not be assessed the additional fees as these charges are already included and factored into Category 2.(A).(2) annual fees. Assessing additional fees for licensees already paying an annual fee under Category 2.A.(2) is double charging according to the commenters. One uranium recovery licensee questioned the revision of Footnotes 1 and 7 to 10 CFR 171.16(d) contending that as presently written there is no ambiguity or question. Other uranium recovery licensees indicated that they needed more information concerning the method used to establish the annual fees because of the wide fluctuations in these fees during the past three fiscal years. Others stated that while the proposed fees for FY 1993 represented a relief from the high fees of the previous two years the proposed rule does not provide a means of reimbursement for overpayment of FY 1993 annual fees that have already been paid to the NRC by the first three quarterly billings.

Response. The NRC explained its reasons for establishing a new Category 4D in its two fee regulations, 10 CFR Parts 170 and 171. The new category will allow the NRC to specifically segregate and identify those licenses which authorize the receipt, possession, and disposal of byproduct material as defined by Section 11.e.(2) of the Atomic Energy Act, from other persons. This change is based on NRC's recognition of potential increased activity related to the

disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license (58 FR 21670).

The costs allocated to the uranium recovery class of licensee are for safety generic and other regulatory activities that are attributable to this class of licensees and that are not recovered by 10 CFR Part 170 license and inspection fees. With respect to mill licensees in fee Category 2.A.(2) that authorize both milling operations and the disposal of Section 11.e.(2) byproduct material, the same NRC regulations, (e.g., 10 CFR Part 40), guidance (e.g., Regulatory Guides) and policies are applicable to both the license which authorizes milling and disposal of Section 11.e.(2) byproduct material and the license that only authorizes disposal of 11.e.(2) byproduct material. The 10 CFR Part 40 generic safety regulations are applied in the same manner to each license in the class independent of the source material activities authorized by the licenses. Therefore, mill licenses subject to the fees in fee Category 2A of 10 CFR 170.31 and fee Category 2.A.(2) of 10 CFR 171.16 will not be assessed fees under fee Category 4D. All other licenses, including mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities (fee Category 14) and the receipt, from other persons, of Section 11.e(2) byproduct materials for possession and disposal will be subject to the Category 4D fees.

Although 10 CFR 171.19(b) specifies that the Commission will adjust the fourth quarter bill to



recover the full amount of the revised annual fee, the NRC agrees that this section should be modified to more specifically cover overpayments. Accordingly, in this final rule the Commission has revised 10 CFR 171.19(b) to specifically state NRC's policy for handling those situations where the amounts collected in the first three quarters exceed the amount of the annual fee published in the final rule.

With respect to footnotes 1 and 7 in 10 CFR 171.16, the NRC indicated in the proposed rule that during the past two years many licensees have stated 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 particular, this issue was raised by certain uranium mill licensees who have mills not currently in operation. 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 the 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 (58 FR 21667-21668). To



remove any uncertainty, the NRC is making minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

5. Comment. One commenter indicated that the methodology used in the current rule to determine inspection fees (routine and non-routine) in 10 CFR Part 170 should remain the same and that by proposing a uniform fee for both routine and non-routine inspections NRC believes they are equivalent. The commenter feels that the burden for inspection fees should be placed on licensees facing non-routine inspections and that by creating a uniform fee for both types of inspections the NRC, in turn, burdens those licensees who do not require non-routine inspections and who are unlikely to in the future. The commenter suggests that NRC create a lower fee schedule for routine inspections and make up the difference with higher fees for non-routine inspections.

Response. NRC indicated in the proposed rule the reason for combining the current routine and nonroutine inspection fees into a single inspection fee. NRC review of the inspection information indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed (58 FR 21670). Therefore, the NRC has little or no meaningful current data on which to base a separate nonroutine inspection fee. As a result, the NRC is combining routine and nonroutine

inspection fees into a single fee for routine and nonroutine inspections. Fees will continue to be assessed for any nonroutine inspections conducted of licensed programs.

6. Comment. One commenter stated that although the United States Enrichment Corporation (USEC) is neither a licensee nor license applicant, significant resources will be expended to certify the gaseous diffusion plants and it appears that no income has been attributed to the effort associated with this on-going certification process for FY 1993.

Response. No budgeted costs were included in the FY 1993 budget for the activities necessary for the certification of the USEC gaseous diffusion uranium enrichment facilities. The NRC expects to bill USEC for all costs incurred after July 1, 1993, the formation date of USEC. The billings will begin during the first quarter of FY 1994.

7. Comment. One commenter indicated that the NRC had improperly calculated the costs of the High Level Waste (HLW) program by not including \$1.7 million in administrative costs in FY 1993 which were included in the FY 1992 calculations. The commenter contends that utilities would pay these LLW-related costs through the reactor annual fee when they have already paid for these activities through their mill/Kwhr contribution to the NWF; therefore the NRC should correct this inequity by an appropriate reduction in the power reactor surcharge.

Response. All NRC's direct costs related to the disposal of civilian high-level radioactive waste and spent fuel in the Department of Energy's geologic repository are paid for with dollars appropriated from the Nuclear Waste Fund. Administrative support costs such as office space, telephones, training, supplies, and computers are not charged to the Nuclear Waste Fund. The NRC now budgets administrative support funds centrally in its Nuclear Safety Management and Support program which contains the activities of those offices which annually provide the administrative support. This was done to facilitate a more direct correlation between budget formulation and budget execution. For FY 1993, licensees have not paid for these administrative support activities through their mill/kwhr contribution to the NWF because the costs were not included in the NWF for HLW.

Comment. As in FY 1991 and FY 1992, commenters suggested that the NRC fee proposals violate the public trust and demean the intent of Congress. Commenters indicate that the NRC should assess fees based on the amount of throughput of material, the size of the facility, the amount or type of material possessed, the sales generated by the licensed location, the competitive condition of certain markets including the assessment of fees to Agreement States and the effect of fees on domestic and foreign competition. One commenter suggested that because the NRC has authority to allow a State to become an Agreement State, the NRC could also charge a fee to either the Agreement State or to individual firms. Another

~~commenter indicated~~<sup>33</sup> indicated that the ~~the~~ government that NRC received 100 percent of its budget is wrong. It allows budgets to grow more irresponsibly than they usually do because no legislator or executive officer needs to face the consequent tax problems.

it is imperative<sup>8</sup> for

other commenters suggested that NRC clearly examine what its regulatory program provides and how it can be provided more effectively.

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Comment

Response. The issue of basing fees on the amount of material possessed, the frequency of use of the material, and the size of the facilities, market competitive portions, and the assessment of fees to Agreement States were addressed by the NRC in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). The Commission did not adopt that approach, and finds no basis for altering its approach at this time.

9. Comment. Several commenters indicated that the hourly rate of \$132 (a seven percent increase over 1992) is excessive in view of the fact that the increase is approximately twice the rate of inflation. These commenters noted that the rate is considerably higher than the typical industry charge-out rate for direct employees and equals or exceeds the hourly charges for senior consultants at major national consulting organizations. The commenters suggested that NRC begin to control its internal cost for example, by combining Regional offices, reducing the research program and reducing the inspection hours by use of Systematic Assessment of Licensee Performance (SALP). This would lower both the hourly rate and the base rate being charged enabling the industry to reduce its nuclear program costs. Some commenters suggested that the increase in the hourly rate be limited to the increase in the rate of inflation or the Consumer Price Index (CPI) while others indicated that the NRC institute an immediate moratorium freezing fees at or below FY 1992 levels.

Response. The NRC professional hourly rate is established to recover approximately 100 percent of the Congressionally approved budget, less the appropriation from the NWF, as required by OBRA-90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of \$132 for FY 1993 are discussed in detail in the Part IV, Section-by-Section Analysis, for § 170.20 of the proposed rule (58 FR 21668). For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1993 and



Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) which must be recovered through fees assessed for the hours expended by the direct FTEs. The budgeted costs have increased \$\_\_\_ million as compared to FY 1992 levels. This increase reflects the amount required by the NRC to effectively accomplish the mission of the agency. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1993-1994" (NUREG-1100, Volume \_\_\_), which is available to the public. Given the increase in the budget, it is necessary to increase the 1993 hourly rate to recover 100 percent of the budget as required by OBRA-90. The NRC is unable to use the CPI or other indices in the development of the NRC hourly rate or the fees to be assessed under 10 CFR Parts 170 and 171 because if the hourly rate were increased by only three to four percent over the FY 1992 levels, the NRC could not meet the statutory mandate requirement of OBRA-90 to recover approximately 100 percent of the NRC budget authority through fees.

10. Comment. The American College of Nuclear Physicians/Society of Nuclear Medicine (ACNPS/SNM) commented that it had submitted a petition for rulemaking to the NRC to review the FY 1991 methodology so that medical licensees could be treated like similar licensees. The commenter believes the NRC is obligated to address the concerns raised in the petition in terms of whether the proposed fee schedule for FY 1993 is consistent with the methodology adopted in

FY 1991.

Response. The NRC indicated in its final rule for FY 1992 that it is not obligated to address the concerns raised in the petition of rulemaking filed with the NRC before adopting the final rule establishing fees for FY 1992 (57 FR \_\_\_\_). This continues to be the case for FY 1993 as well. The NRC had intended to handle the petition within the context of the review and evaluation of the fee program for FY 1993. However, on October 24, 1992, the Energy Policy Act was enacted by the Congress. Section 2903(c) of the Act requires the NRC to review its policy for assessment of annual fees under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. On April 19, 1993 the NRC published a Federal Register Notice soliciting public comment on the need, if any, for changes to the existing fee policy and associated laws in order to comply with the requirements of the Energy Policy Act. The NRC now intends to consider the ACNP/SNM petition as well as a second fee petition received from the American Mining Congress on February 4, 1993, in the context of the study of NRC fee policy as required by the Energy Policy Act. The NRC expects the study to be completed by the end of calendar year 1993.

### III. Final Action -- Changes Included in the Final Rule

In addition to implementing the March 16, 1993, court decision, the NRC is also amending its licensing, inspection, and annual fees for FY 1993. OBRA-90 requires that the NRC recover approximately 100 percent of its FY 1993 budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection and annual fees. The CFO Act requires that the NRC review, on a biennial basis, the fees imposed by the agency.

For FY 1993, the NRC's budget authority is \$540.0 million, of which approximately \$21.1 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$518.9 million in FY 1993 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The NRC estimates that approximately \$\_\_\_\_\_ million will be recovered in FY 1993 from the fees assessed under 10 CFR Part 170. The remaining \$\_\_\_\_\_ million would be recovered through the FY 1993 10 CFR Part 171 annual fees.

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) and July 23, 1992 (57 FR 32691).

Under this final rule, fees for most licenses will increase because --

(1) NRC's new budget authority has increased resulting in a corresponding increase in the professional hourly rate; and

(2) The number of licenses in some classes have decreased

due to license termination or consolidation resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1993, as stipulated in the Public Law. Therefore, as in FY 1991 and FY 1992, the fee, 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 1993 rule.

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

Six amendments have been made 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 agency-wide professional hourly rate, which is used to determine the Part 170 fees, is increased about seven percent from \$123 per hour to \$132 per hour (\$229,912 per direct FTE). The rate is based on the FY 1993 direct FTEs and that portion of the FY 1993 budget that is not recovered through the appropriation from the NWF.

Second, the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are revised to reflect both the increase in the professional hourly rate and the results of the review required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) and to conduct routine and nonroutine inspections for those licensees whose fees are based on the average cost method (flat fees).

The evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions has increased in some categories. Therefore, the fees for these categories must be increased to reflect the costs incurred in completing the licensing actions. For other categories, the revised fees reflect that the average number of professional staff hours per licensing action decreased. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1990. The licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1993 of \$132 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1990 (55 FR 21173; May 23, 1990).

In the materials inspection area, the historical data for the average number of professional staff hours necessary to complete routine and nonroutine inspections show that inspection hours used to determine the amount of the inspection fee have increased and in many cases significantly, when compared to the hours currently used under 10 CFR Part 170. The data for the average number of professional staff hours necessary to conduct routine and nonroutine inspections were last updated in FY 1984 (49 FR 21293; May 21, 1984). As a result, the average number of



professional staff hours used in the current fee schedule for inspections is outdated. Since 1985, the amount of the inspection fees has been updated based only on the increased professional hourly rate. The increased average professional staff hours reflects the changes in the inspection program that have been made for safety reasons. In some program areas, for example, NRC management guidance in recent years has emphasized that inspections be more thorough, in-depth and of higher quality. The inspection fees are based on the new average professional staff hours necessary to conduct the inspections multiplied by the professional hourly rate for FY 1993 of \$132 per hour.

In summary, the NRC is to revising both materials licensing and inspection fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service.

The review of the inspection information also indicates that over 90 percent of the inspections conducted by NRC are routine inspections. As a result, for most fee categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed. For these reasons, the NRC, for fee purposes, is establishing a single inspection fee rather than separate fees for routine and nonroutine inspections. This inspection fee will be assessed for either a routine or a nonroutine inspection conducted by the NRC.

Third, a new fee category 4D is added to 10 CFR Part 170.31 to specifically segregate and identify licenses 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. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material

content.

Fourth, irradiator fee Categories 3F and 3G in 10 CFR Part 170.31 are broadened to include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Fifth, a new section, 170.8 is added to comply with Office of Management and Budget (OMB) regulations that require agencies to give public notice, or a negative declaration, of the presence of information collection requirements contained in Federal regulations.

Sixth, the definition of materials license in section 170.3 is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration, or other form of permission issued by the NRC.

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.

Seven amendments have been made to 10 CFR Part 171. First, §§ 171.15, and 171.16 are amended to revise the annual fees for FY 1993 to recover approximately 100 percent of the FY 1993 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Second, § 171.11 is amended to revise paragraphs (a), (b), and (d). Paragraph (a) is revised to revoke the current exemption from annual fees for nonprofit educational

institutions. The NRC is changing its previous policy decision because it believes it has no choice given the U.S. Court of Appeals decision on fees and the lack of a clear administrative record on which to base a continued exemption. A detailed discussion of this change in fee policy is found in Section II of this final rule. Other changes to paragraph (a) incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors. Section 2903(a)(4) of the Energy Policy Act, enacted October 24, 1992, amends Section 6101(c) of OBRA-90 to specifically exempt from 10 CFR Part 171 annual fees certain Federally owned research reactors if--

(1) The reactor is used primarily for educational training and academic research purposes and;

(2) The design of the research reactor satisfies certain technical specifications set forth in the legislation.

The NRC, in implementing this provision of the Energy Policy Act, intends to limit the exemption in 10 CFR Part 171 only to Federally owned research reactors.

Clarifying changes to the exemption provision for materials licensees in §§ 171.11(b) and (d) are also being made.

The NRC is amending §171.11(d) to clarify that the three factors for exemption for materials licensees should not be read as conjunctive requirements but rather should be read as independent considerations which can support an exemption request.

The NRC also notes that since the final FY 1992 rule was published in July 1992, 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 1992 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 but was unable to respond and take action on all of the requests prior to the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the Commission, for FY 1993, is exempting from the FY 1993 annual fees 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, 1992, and were capable of permanently ceasing licensed activities entirely by September 30, 1992. In addition, because nonprofit educational institutions will be billed for the first time for annual fees, they are being afforded the same opportunity to file request for termination and avoid the FY 1993 as other licensees were given when annual fees were first assessed to them in FY 1991. The NRC wishes to emphasize that nonprofit educational institutions who hold licenses, certificates, registrations, and approvals and who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1993, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Nonprofit educational institutions who hold licenses, certificates, registrations and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the NRC for a waiver of the FY 1993 annual fee. All other licensees and approval holders who held a license or approval on October 1, 1992, are subject to the FY 1993 annual fees.

Third, § 171.19 is amended to credit the quarterly partial payments made by certain licensees in FY 1993 toward their total annual fee to be assessed or to make refunds, if necessary.

Fourth, a new category 4D is added to 10 CFR Part 171.16(c) to specifically segregate and identify licenses 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. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Fifth, additional language is added for irradiator fee Categories 3F and 3G in 10 CFR Part 171.16(d) to clarify that those two fee categories include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Sixth, a new section 171.8 is being added to comply with Office of Management and Budget (OMB) regulations that require agencies to give the public notice, or a negative declaration, of the presence of information collection requirements contained in Federal regulations.

Seventh, the definition of materials license in section 171.3 is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC.

The NRC notes that the impact of the fees for FY 1993 on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A to this final rule). Based on this analysis, the NRC is continuing for FY 1993 a maximum annual fee



of \$1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The NRC is also continuing for FY 1993 the lower tier small entity annual fee of \$400 per licensed category for certain materials licensees, which was established by the NRC in FY 1992 (57 FR 13625; April 17, 1992).

The 10 CFR Part 171 annual fees have been determined using the same method used to determine the FY 1991 and FY 1992 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 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 charges are consistent with the Congressional guidance in the Conference Committee Report, 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.

The NRC notes that many licensees have indicated during the past two years 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 particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. 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 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 uncertainty, the NRC is issuing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

C. FY 1993 Budgeted Costs.

The FY 1993 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 1993 Budget Authority

<u>Recovery Method</u>	<u>Estimated Amount (\$ in Millions)</u>
Nuclear Waste Fund	\$21.1
Part 170 (license and inspection fees)	—
Other receipts	.1
Part 171 (annual fees)	
Power Reactors	—
Nonpower Reactors	.5
Fuel Facilities	—
Spent Fuel Storage	.7
Uranium Recovery	.5
Transportation	4.4
Material Users	— <sup>1/</sup>
Subtotal	\$372.1
Costs remaining to be recovered not identified above	—
Total	\$540.0

<sup>1</sup>/Includes \$5.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

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

\$\_\_\_\_\_ million to operating power reactors;

\$\_\_\_\_\_ million to fuel facilities; and

\$\_\_\_\_\_ million to other materials licensees.

In addition, approximately \$\_\_\_\_\_ 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 1993 budget authority in accordance with OBR 90, the NRC will recover \$\_\_\_\_\_ million of the \$\_\_\_\_\_ million from operating power reactors and the remaining \$\_\_\_\_\_ million from large entities that are not reactor licensees.

This distribution results in an additional charge (surcharge) of approximately \$\_\_\_\_\_ per operating power reactor; \$\_\_\_\_\_ for each HEU, LEU, UF<sub>6</sub> and each other fuel

facility license; \$\_\_\_\_\_ for each materials license in a category that generates a significant amount of low level waste; and \$\_\_\_\_\_ for other materials licenses. When added to the base annual fee of approximately \$\_\_\_\_\_ million per reactor, this will result in an annual fee of approximately \$\_\_\_\_\_ million per operating power reactor. The total fuel facility annual fee will be between approximately \$\_\_\_\_\_ and \$\_\_\_\_\_ million. The total annual fee for materials licenses will vary depending on the fee category(ies) assigned to the license.

The additional charges not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of previous Commission policy decisions will 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 V of this final rule.

The NRC notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," Florida Power & Light Co. v. NRC, 846 F.2d 765, 770 (D.C. Cir. 1988), cert. denied, 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101-508 have acknowledged the D.C. Circuit's holding that the Commission was within its legal discretion not to impose fees on

all licensees.

#### IV. Section-by-Section Analysis

The following analysis of those sections that are affected under this final 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.

The definition of materials license is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 C.F.R. Parts 30, 32 through 35, 39, 40, 61, 70, 71 and 72. This definition is consistent with the definition of license in Section 551(8) of the Administrative Procedures Act.

##### Section 170.8 Information collection requirements: OMB approval.

This section is being added to comply with Office of Management and Budget (OMB) regulations that require agencies to give the public notice, or a negative declaration, of the



presence of information collection requirements contained in Federal regulations. These revisions are of a minor administrative nature and are made to comply with OMB regulations.

Section 170.20 Average cost per professional staff hour.

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1993 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1993 for all fee categories that are based on full cost is \$132 per hour, or \$229,912 per direct FTE. The rate is based on the FY 1993 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 and FY 1992. The method is as follows:

1. All direct FTEs are identified in Table II by major program.

Table II  
Allocation of Direct FTEs  
by Major Program

Major Program	Number of direct FTEs <sup>1/</sup>
Reactor Safety & Safeguards Regulation . . . . .	1,080.0
Reactor Safety Research . . . . .	117.7
Nuclear Material & Low- Level Waste Safety & Safeguards Regulation . . . . .	334.4
Reactor Special and Independent Reviews, Investigations, and Enforcement . . . . .	69.0
Nuclear Material Management and Support . . . . .	<u>18.0</u>
Total direct FTE . . . . .	1,619.1 <sup>2/</sup>

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

<sup>2/</sup> In FY 1993, 1,619.1 FTEs of the total 3,296 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,676.9 FTEs are considered overhead and general and administrative.

2. NRC FY 1993 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, 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) and July 23, 1992 (57 FR 32691) and excluding direct Program Support funds, the remaining \$372.3 million allocated uniformly to the direct FTEs (1,619.1) results in a rate of \$229,912 per FTE for FY 1993. The Direct FTE Hourly Rate is \$132 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing \$372.3 million by the number of direct FTEs (1,619.1 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

Table III  
FY 1993 Budget Authority by Major Category  
(Dollars in millions)

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Salaries and benefits . . . . .	\$254.1
Administrative support . . . . .	83.8
Travel . . . . .	<u>14.1</u>
Total nonprogram support obligations . . . . .	\$352.0
Program support . . . . .	<u>166.9</u>
Total Budget Authority . . .	\$518.9
Less direct program support and offsetting receipts . . . . .	<u>146.6</u>
Budget Allocated to Direct FTE	\$372.3
Professional Hourly Rate . . .	\$132

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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 licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1993 budgeted costs and to more completely 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) cost expended by the NRC. Any professional hours

expended on or after the effective date of this rule will be assessed at the FY 1993 rate shown in § 170.20. The NRC is revising the amount of the import and export licensing fees in § 170.21, facility Category K to provide for the increase in the hourly rate from \$123 per hour to \$132 per hour.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, July 10, 1991, and July 23, 1992, rules 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 are revised to recover more completely the FY 1993 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, have been adjusted to reflect both the increase in the professional hourly rate from \$123 per hour in FY 1992 to \$132 per hour in FY 1993 and the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and to conduct inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged nuclear materials licensees and applicants for licensing actions (new licenses, renewals, and amendments) and for inspections. The full cost license/inspection fees (e.g., for reactor and fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing and inspection flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action or inspection for each license category. These average hours are multiplied by the professional hourly rate of \$132 per hour for FY 1993. Because the professional hourly rate is updated annually, the biennial review examined only the average number of hours per licensing action and inspection. The review indicates that the NRC needs to modify the average number of hours on which the current licensing and inspection flat fees are based in order to recover the cost of providing the licensing and inspection services. The average number of hours required for licensing actions was last reviewed and modified in 1990 (55 FR 21173; May 23, 1990). Thus the revised hours used to determine the fees for FY 1993 reflect the changes in the licensing program that have occurred since that time, for example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety. The average number of hours for materials licensing actions (new licenses, renewals and amendments) have not changed significantly for most categories. For new license applications, approximately 60 percent of the materials license population have increases of less than 25 percent, with some having slight decreases. For license renewals, approximately 85 percent have

increases of less than 25 percent, with some having decreases; and for amendments, approximately 90 percent have increases of less than 25 percent with some having decreases. Only 2 percent of the materials license population have increases of 100 percent or greater, for example, in the renewal area, irradiator licenses (fee Categories 3F and 3G) and licenses authorizing distribution of items containing byproduct material to persons generally licensed under 10 CFR Part 31 (fee Category 3J).

For materials inspections, a distribution of the changes to the inspection fees shows that inspection fees increased by at least 100 percent for 19 percent of the licenses. The largest increases are for inspections conducted of those licenses authorizing byproduct material for 1) broad scope processing or manufacturing of items for commercial distribution (fee category 3A); 2) broad scope research and development (fee category 3L); and 3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses have increases of more than 50 percent. The primary reason for these relatively large increases is that the average number of hours on which inspection fees are based has not been updated since 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional hours used in the current fee schedule for inspections is outdated. During the past eight years, the NRC's inspection program has changed significantly. In some program areas, for example, NRC management guidance in recent years has emphasized that, based on

historical enforcement actions, inspections be more thorough and in-depth so as to improve public health and safety.

The review of the inspection information also indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most fee categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed. Therefore, the NRC has little or no meaningful current data on which to base a separate nonroutine inspection fee. For these reasons, the NRC, for fee purposes, is combining routine and nonroutine inspection fees into a single fee rather than assess separate fees for routine and nonroutine inspections. This inspection fee will be assessed for either a routine or a nonroutine inspection conducted by the NRC.

The amounts of the licensing and inspection flat fees were rounded, as in FY 1991 and FY 1992, 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 revised 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.

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 \$132, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Additional language is proposed for irradiator fee Categories 3F and 3G in 10 CFR Part 170.31 to clarify that those two fee categories include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. Although the sources are not removed from their shielding for irradiation purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators, and possession limits of thousands of curies are authorized in the licenses. The design of the facility is important to the safe use of both exposed source irradiators and underwater irradiators, and 10 CFR 36 applies the same requirements to the underwater irradiators where the source is not exposed for irradiation as to the exposed source irradiators. The average costs of conducting license reviews and performing inspections of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where



the source is exposed during irradiation.

Category 4D in 10 CFR Part 170.31 is amended to specifically segregate and identify those licenses 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. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. This change is based on the NRC's recognition of increased activity related to disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license. Mill licenses subject to the fees in fee Category 2A of 10 CFR 170.31 will not be assessed fees under fee Category 4D. All other licenses, including mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities (fee Category 14) and the receipt, from other persons, of Section 11.e(2) byproduct material for professional and disposal will be subject to the Category 4D fees.

## Part 171

### Section 171.3 Definitions.

The definition of materials license is being revised to clarify that the term license, for fee purposes, includes a

license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 CFR Parts 30, 32 through 35, 39, 40, 61, 70, 71 and 72. This definition is consistent with the definition of license in Section 551(8) of the Administrative Procedures Act.

Section 171.8 Information collection requirements: OMB approval.

This section is added to comply with Office of Management and Budget (OMB) regulations that require agencies to give the public notice, or a negative declaration, of the presence of information collection requirements contained in Federal regulations. These revisions are of a minor administrative nature and are made to comply with OMB regulations.

Section 171.11 Exemptions.

Paragraph (a) of this section is amended to revoke the current exemption from annual fees for nonprofit educational institutions. The NRC is changing its previous policy decision because it believes it has no choice given the U.S. Court of Appeals decision on fees and the lack of a clear administrative record on which to base a continued exemption. A detailed discussion of this change in fee policy is found in Section II of this final rule.

A new paragraph is added which incorporates the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors and paragraphs (b) and (d), the exemption section for materials licensees, have been revised. Section 2903(a)(4) of the Energy Policy Act amends Section 6101(c) of OBRA-90 to specifically exempt from 10 CFR Part 171 annual fees certain Federally owned research reactors if--

(1) The reactor is used primarily for educational training and academic research purposes; and

(2) The design of the research reactor satisfies certain technical specifications set forth in the legislation. For purposes of this exemption the term "research reactor" means a nuclear reactor that--

(i) Is licensed by the Nuclear Regulatory Commission under section 104 c. 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.

The NRC, in implementing this provision of the Energy Policy Act, is limiting the exemption in 10 CFR Part 171 only to Federally owned research reactors.

The NRC, in making this required change, is not changing its exemption policy. As in FY 1991 and FY 1992, the NRC will continue a very high eligibility threshold for exemption requests and reemphasizes its intent to grant exemptions sparingly. Therefore, the NRC strongly discourages the filing of exemption requests by licensees who have previously had exemption requests denied unless there are significantly changed circumstances.

Earlier in this notice, the NRC discussed its decision to revoke the current exemption from an annual fees for nonprofit educational institutions. Nonprofit educational institutions will be subject to annual fees in FY 1993.

The NRC is revising § 171.11(b) to not only require that requests for exemptions be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees but also to require that clarification of or questions relating

to annual fee bills must also be filed within 90 days from the date of the invoice.

Exemption requests, or any requests to clarify the bill, will not, per se, extend the interest-free period for payment of the bill. Bills are due on the effective date of the final rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges.

Experience in considering exemption requests under §171.11 has indicated that § 171.11(d) is ambiguous regarding whether an applicant must fulfill all, or only one, of the three factors listed in the exemption provision in order to be considered for an exemption. The NRC is clarifying the section to indicate that the three factors should not be read as conjunctive requirements but rather as independent considerations which can support an exemption request.


The NRC notes that Section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees, under Section 6101(c) of OBRA-90, solicit comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees, particularly those who hold licenses to operate Federally owned research reactors used primarily for educational training and



academic research purposes. The NRC published for public comment a separate notice in the Federal Register on April 19, 1993 (58 FR 21116-21121). The 90-day public comment period for this notice expires on July 19, 1993.

The NRC also notes that since the FY 1992 final rule was published in July 1992, licensees have continued to file requests for termination with the NRC. Other licensees have either called or written to the NRC since the 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 but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the NRC is exempting from the FY 1993 annual fees 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 prior to October 1, 1992, and were capable of permanently ceasing licensed activities entirely by September 30, 1992. In addition, because nonprofit educational institutions will be billed for the first time for annual fees the NRC wishes to emphasize that nonprofit educational institutions who hold licenses, certificates,

registrations, and approvals and who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1993, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Nonprofit educational institutions who hold licenses, certificates, registrations, and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the Commission for a waiver of the FY 1993 annual fee. This is being done so that nonprofit educational institutions will be afforded the same opportunity to file for termination and avoid the FY 1993 annual fee as other licensees were given when annual fees were first assessed to them in FY 1991. All other licensees and approval holders who held a license or approval on October 1, 1992, are subject to the FY 1993 annual fees.



Section 171.15 Annual Fee: Reactor operating licenses.

The annual fees in this section are revised to reflect the FY 1993 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1993.

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 1993 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

Table IV

ALLOCATION OF NRC FY 1993 BUDGET TO POWER REACTORS BASE FEES<sup>1/</sup>

	Program Element		Allocated to	
	<u>Total</u>		<u>Power Reactors</u>	
	Program	Direct	Program	Direct
	<u>(\$,K)</u>	<u>FTE</u>	<u>(\$,K)</u>	<u>FTE</u>
REACTOR SAFETY AND SAFEGUARDS REGULATION (RSSR)				
Standard Reactor Designs	\$6,663	111.2	\$6,363	103.5
Reactor License Renewal	913	14.6	913	14.6
Reactor and Site Licensing	1,015	24.4	995	24.1
Resident Inspections	---	204.0	---	204.0
Region-Based Inspections	4,628	245.5	4,628	240.3
Interns (HQ and Regions)	---	45.0	---	45.0
Special Inspections	3,157	60.7	3,157	60.7
License Maintenance and Safety Evaluations	8,606	222.3	8,606	222.3
Plant Performance	860	55.1	860	55.1
Human Performance	6,920	61.0	6,470	56.4
Other Safety Reviews and Assistance	988	36.1	<u>658</u>	<u>29.7</u>
RSSR PROGRAM TOTAL			\$32,650 1,055.7	

Table IV  
(Continued)

	<u>Program Element</u> <u>Total</u>		<u>Allocated to</u> <u>Power Reactors</u>	
	<u>Program</u> <u>Support</u> <u>(\$,K)</u>	<u>Direct</u> <u>FTE</u>	<u>Program</u> <u>Support</u> <u>(\$,K)</u>	<u>Direct</u> <u>FTE</u>
REACTOR SAFETY RESEARCH (RSR)				
Standard Reactor Designs	\$20,200	29.6	\$20,200	29.6
Reactor Aging & License Renewal	22,293	13.4	21,493	13.3
Plant Performance	2,800	3.0	2,800	3.0
Human Reliability	6,150	7.2	6,150	7.2
Reactor Accident Analysis	22,102	26.0	22,102	26.0
Safety Issue Resolution and Regulatory Improvements	11,590	38.5	<u>11,590</u>	<u>38.5</u>
RSR PROGRAM TOTAL			\$84,335	117.6
NUCLEAR MATERIAL & LOW LEVEL (NMLL)				
<u>NMLL (NMSS)</u>				
Safeguards Licensing and Inspection	\$440	19.4	\$--	.1
Threat & Event Assess./ International Safeguards	1,600	12.7	1,275	6.1
Develop & Implement Inspection Activities	0	2.3	0	1.3
Uranium Recovery Licensing and Inspection	350	9.7	38	.2
Decommissioning	1,200	30.1	200	5.6
<u>NMLL (RES)</u>				
Environmental Policy and Decommissioning	1,925	9.0	<u>825</u>	<u>3.8</u>
NMLL PROGRAM TOTAL			\$2,338	17.1



Table IV  
(Continued)

	Program Element		Allocated to	
	<u>Total</u>		<u>Power Reactors</u>	
	Program	Support Direct	Program	Support Direct
	<u>(\$,K)</u>	<u>FTE</u>	<u>(\$,K)</u>	<u>FTE</u>
REACTOR SPECIAL AND INDEPENDENT REVIEWS, INVESTIGATIONS, AND ENFORCEMENT				
Diagnostic Evaluations	350	7.0	\$350	7.0
Incident Investigations	25	1.0	25	1.0
NRC Incident Response	2,005	24.0	2,005	24.0
Operational Experience Evaluation	5,360	34.0	5,360	34.0
Committee on Review Generic Requirements	---	2.0	---	2.0
RSIRIE PROGRAM TOTAL			<u>\$7,740</u>	<u>68.0</u>
TOTAL			\$127,063 1,258.4	

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TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	\$416.4 million <sup>2/</sup>
LESS ESTIMATED PART 170 POWER REACTOR FEES	\$ million
PART 171 BASE FEES FOR OPERATING POWER REACTORS	\$ million

<sup>1/</sup> 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.

<sup>2/</sup> 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 1993 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. Beaver Valley 2	" "	
3. Braidwood 1	" "	
4. Braidwood 2	" "	
5. Byron 1	" "	
6. Bryon 2	" "	
7. Callaway 1	" "	
8. Comanche Peak 1	" "	
9. Diablo Canyon 1	" "	
10. Diablo Canyon 2	" "	
11. Farley 1	" "	
12. Farley 2	" "	
13. Ginna	" "	
14. Haddam Neck	" "	
15. Harris 1	" "	
16. Indian Point 2	" "	
17. Indian Point 3	" "	
18. Kewaunee	" "	
19. Millstone 3	" "	

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

46.	Cook 1	"	"	\$
47.	Cook 2	"	"	
48.	McGuire 1	"	"	
49.	McGuire 2	"	"	
50.	Sequoyah 1	"	"	
51.	Sequoyah 2	"	"	

Combustion Engineering:

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

Babcock & Wilcox:

1.	Arkansas 1	"	"	\$
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2.	Crystal River 3	"	"	\$
3.	Davis Besse 1	"	"	
4.	Oconee 1	"	"	
5.	Oconee 2	"	"	
6.	Oconee 3	"	"	
7.	Three Mile Island 1	"	"	

#### General Electric

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



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

Other Reactors:

1. Big Rock Point      GE Dry Containment
2. Three Mile Island 2 B&W PWR-Dry Containment

The "Other Reactors" listed in Table V have not been included in the fee base because historically they have been granted either full or partial exemptions from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC

hereby grants a partial exemption from the FY 1993 annual fees based on a request filed with the NRC in accordance with §171.11. The total amount of \$\_\_\_ to be paid by Big Rock Point and South Texas 2 has been subtracted from the total amount assessed operating reactors as a surcharge. The NRC, in this final rule grants a full exemption for Three Mile Island 2 because the authority to operate TMI-2 was revoked in 1979. e

Paragraph (b)(3) is revised to change the fiscal year references from FY 1992 to FY 1993. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1993, which is added to the base annual fee for each operating power reactor shown in Table V. This surcharge recovers 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 1993 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

FY 1993  
 Budgeted Costs  
 (\$ In Millions)

<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, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions;	\$5.2
b. international cooperative safety program and international safeguards activities; and	8.4
c. 67% of low level waste disposal generic activities;	
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	
b. costs not recovered from Part 171 for small entities.	<u>4.5</u>
Subtotal Budgeted Costs	\$
Less amount to be assessed to smaller older reactors with partial exemption under Parts 171	<u>-.5</u>
Total Budgeted Costs	\$

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$ \text{ million}}{\text{---}} = \$ \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of \$\_\_\_\_\_ and an additional charge of \$\_\_\_\_\_ for a total annual fee of \$\_\_\_\_\_ for FY 1993.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1993 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1993 annual fee for non-power (test and research) reactors. This includes nonpower reactor licenses issued to nonprofit educational institutions. In FY 1993, \$\_\_\_\_\_ in costs are attributable to those commercial, nonprofit educational, 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 \$\_\_\_\_\_ per operating license. The Energy Policy Act provided for 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. The NRC has granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center, Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado and the Armed Forces Radiobiological Institute, Bethesda, Maryland for its research reactor. *check*

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.

Paragraph (d) is revised to reflect the FY 1993 budgeted costs for materials licensees, including Government agencies licensed by the NRC. These fees are necessary to recover the FY 1993 generic costs totalling \$\_\_\_\_\_ million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

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 1993 BUDGET TO FUEL  
FACILITY BASE FEES<sup>1/</sup>

	Total Program Element		Allocated to Fuel Facility	
	-----		-----	
	Program Support		Program Support	
	\$,K	FTE	\$,K	FTE
	-----	-----	-----	-----
NMLL (RESEARCH)				
Radiation Protection/Health Effects	1,640	5.3	\$350	1.1
Environmental Policy and Decommissioning	1,925	9.0	<u>100</u>	<u>.4</u>
NMLL (RES) PROGRAM TOTAL			\$450	1.5
NMLL (NMSS)				
Fuel Facilities Lic./Inspections	\$4,800	157.9	1,510	39.4
Event Evaluation	---	15.3	---	3.8
Safeguards Licensing/Inspection	440	19.4	440	17.3
Threat and Event Assessment	1,600	12.7	123	1.5
Decommissioning	1,050	21.8	190	5.1
Uranium Recovery (DAM SAFETY)	350	9.7	<u>6</u>	<u>---</u>
NMLL (NMSS) PROGRAM TOTAL			\$2,269	67.1
NMLL (MSIRIE)				
Incident Response	---	3.0	---	1.0
TOTAL NMLL			=====	=====
			\$2719	69.6
-----				
TOTAL BASE FEE AMOUNT ALLOCATED TO FUEL FACILITIES			\$18.7 million <sup>2/</sup>	
LESS PART 170 FUEL FACILITY FEES			_____ million	
PART 171 BASE FEES FOR FUEL FACILITIES			\$_____ million	

<sup>1/</sup> 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.

<sup>2/</sup> Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Table VII  
ALLOCATION OF FY 1993 BUDGET TO MATERIAL USERS BASE FEES<sup>1/</sup>

	Total		Allocated to Materials Users	
	Program Support \$,K	FTE	Program Support \$,K	FTE
NMLL (RESEARCH)				
Materials Licensee Performance	\$550	.4	\$495	.4
Materials Regulatory Standards	1,000	12.1	854	10.3
Radiation Protection/Health Effects	1,640	5.3	1,161	3.8
Environmental Policy and Decommissioning	1,925	9.0	<u>900</u>	<u>4.3</u>
TOTAL NMLL (RES)			\$3,410	18.8
NMLL (NMSS)				
Licensing/Inspection of Materials Users	\$2,300	92.6	2,070	93.3
Event Evaluation	---	15.3	---	11.9
Threat and Event Assessment	1,600	12.7	89	---
Decommissioning	1,050	21.8	684	16.6
Low level waste - on site disposal	850	17.0	<u>225</u>	<u>1.9</u>
TOTAL NMLL (NMSS)			\$3,068	123.7
NMLL (MSIRIE)				
Analysis and Evaluation of Operational Data	256	8.0	<u>113</u>	<u>4.5</u>
TOTAL NMLL Program			\$6,591	147.0
-----				
BASE AMOUNT ALLOCATED TO MATERIALS USERS (\$,M)			\$40.4 million <sup>2/</sup>	
LESS PART 170 MATERIAL USERS FEES			<u>\$</u> million	
PART 171 BASE FEES FOR MATERIAL USERS			<u>\$</u> million	

<sup>1/</sup> 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.

<sup>2/</sup> 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 \$\_\_\_\_\_ million in budgeted costs to the individual fuel facilities is based, as in FY 1991 and FY 1992, primarily on the 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 generic safety and safeguards costs (e.g., physical security) are attributable to these 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	\$
Babcock and Wilcox	_____
Subtotal	\$
<u>Low Enriched Fuel</u>	
Siemens Nuclear Power	\$
Babcock and Wilcox	_____
General Electric	_____
Westinghouse	_____
Combustion Engineering	_____
(Hematite)	
Subtotal	\$

UF<sub>6</sub> ConversionSafeguards and Safety

Allied Signal Corp.  
Sequoyah Fuels Corp.

\$  
\_\_\_\_\_

Subtotal

\$

Other fuel facilities  
(5 facilities at \$122,000  
each)

\$  
\_\_\_\_\_

Total

\$

One of the 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, that directed 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 grants an exemption for one of CE's low enriched uranium fuel facilities for FY 1993. The NRC therefore has calculated the FY 1993 annual fees for the low enriched fuel category by dividing its budgeted costs among five licenses rather than six licenses as done previously.

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 50 percent of the \$\_\_\_\_\_ for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 27 percent of the \$\_\_\_\_\_ for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill

tailings (Class II facilities). The remaining 23 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	\$
Class II facilities	\$
Other facilities	\$

For spent fuel storage licenses, the generic costs of \$\_\_\_\_\_ 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 \$\_\_\_\_\_.

To equitably and fairly allocate the \$\_\_\_\_\_ million attributable to the approximately 6,800 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 because the 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:



Annual Fee = (Application Fee + Inspection Fee/Inspection Priority) x Constant + (Unique Category Costs).

The constant is the multiple necessary to recover \$\_\_\_\_\_ million and is 2.3 for FY 1993. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1993, unique costs of approximately \$1.9 million were identified for the medical improvement program which is attributable to medical licensees; about \$115,000 in costs were identified as being attributable to radiography licensees; and about \$115,000 was identified as being attributable to irradiator licensees. The changes to materials annual fees for FY 1993 varies compared to the FY 1992 annual fees. Some of the annual fees decrease while other annual fees increase. There are three reasons for the changes in the fees compared to FY 1992. First, the FY 1993 budgeted amount attributable to materials licensees is about 12 percent higher than the FY 1992 amount. Second, the number of licensees to be assessed annual fees in FY 1993 has decreased about 4 percent below the FY 1992 levels (from about 7,100 to about 6,800). Third, the changes in the 10 CFR Part 170 license application and inspection fees cause a redistribution of the costs on which the annual fees are based, since these Part 170 fees are used as a proxy to determine the annual fees. The materials fees must be established at these levels in order to comply with the mandate of OBRA-90 to recover approximately 100 percent of the NRC's FY 1993 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 on NRC Form 526.

To recover the \$4.4 million attributable to the transportation class of licensees, about \$1.0 million will 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 (\$3.4 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is \$67,400 for users and fabricators and \$1,000 for users only.

The amount or range of the FY 1993 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	\$___ million
Part 70 - Low enriched fuel	\$___ million
Part 40 - UF <sub>6</sub> conversion	\$___ million
Part 40 - Uranium recovery	\$21,100 to 58,100
Part 30 - Byproduct Material	\$680 to \$26,400 <sup>1/</sup>
Part 71 - Transportation of Radioactive Material	\$1,000 to \$67,400
Part 72 - Independent Storage of Spent Nuclear Fuel	\$146,600

1/ Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is \$358,400.

Irradiator fee categories 3F and 3G in 10 CFR 171.16(d) are being broadened to include underwater irradiators for irradiation of materials when the source is not exposed for irradiation purposes. Although the sources are not removed from their shielding for irradiation purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators, and possession limits of thousands of curies are authorized in the licenses. The design of the facility is important to the safe use of both exposed source irradiators and underwater irradiators, and 10 CFR 36 applies the same requirements to the underwater irradiators where the source is not exposed for irradiation as to the exposed source irradiators.

A new Category 4D is added to 10 CFR Part 171.16(d) to specifically segregate and identify those licenses which authorize the receipt, possession and disposal of byproduct material, as defined by Section 11.e.(2) of the Atomic Energy Act, from other persons. This proposed change is based on the NRC's recognition of potential increased activity related to disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license. Therefore, mill licenses subject to the fees in fee Category 2.A.(2) of 10 CFR 171.16 will not be assessed fees under fee Category 4D. All other licenses, including mill licenses that authorize decommissioning,

decontamination, reclamation or site restoration activities (fee Category 14) and the receipt, from other persons, of Section 11.e(2) byproduct material for possession and disposal will be subject to the Category 4D fees.

Paragraph (e) is amended to establish the additional charge which is added to the base annual fees shown in paragraph (d) of this final rule. The alternative selected by the NRC for the allocation of LLW costs is discussed at some length in Section II of this notice. 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. The NRC has continued the previous policy decision to use the volume of waste disposed of by materials licensees to determine the percent of these LLW costs to be recovered from materials licensees. The additional charge recovers approximately \_\_ percent of the NRC budgeted costs of \$\_\_ million relating to LLW disposal generic activities because these materials licensees disposed of \_\_ percent of the total LLW that was disposed of by NRC licensees in 1990-1991. This percentage calculation for FY 1993 differs from the calculation for FY 1991 and FY 1992 because LLW disposed by Agreement State licensees was subtracted from the total prior to calculation of the percentage. The FY 1993 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

FY 1993  
 Budgeted Costs  
 (\$ In Millions)

Category of Costs

- |    |   |         |
|----|---|---------|
| 1. | Activities not attributable to an existing NRC licensee or class of licensee, i.e., 33% of LLW disposal generic activities. | \$ ____ |
|----|---|---------|

Of the \$ \_\_\_\_ million in budgeted costs shown above for LLW activities, 45 percent of the amount (\$ \_\_\_\_ million) are allocated to fuel facilities included in Part 171 (14 facilities), as follows: \$ \_\_\_\_ per HEU, LEU, UF<sub>6</sub> facility and for each of the other 5 fuel facilities. The remaining 55 percent (\$ \_\_\_\_ million) are allocated to the material licensees in categories that generate low level waste (1,049 licensees) as follows: \$ \_\_\_\_ 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 \$ \_\_\_\_ 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 \$ \_\_\_\_.

Of the \$ \_\_\_\_ million not recovered from small entities, \$ \_\_\_\_ million is allocated to fuel facilities and other materials licensees. This results in a surcharge of \$ \_\_\_\_ per category for each 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, pays a base



annual fee of \$\_\_\_\_\_ and an additional charge of \$\_\_\_\_\_ for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of \$\_\_\_\_\_ and an additional charge of \$\_\_\_\_\_, for a total annual fee of \$\_\_\_\_\_ for FY 1993.

The NRC notes that many licensees have indicated during the past two years 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 particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. 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 fees 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 is issuing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

#### Section 171.19 Payment.

This section is revised to give credit for those partial payments made by certain licensees in FY 1993 toward their FY 1993 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1993 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, if necessary. As in FY 1992, 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.

Because nonprofit educational institutions will be required to pay annual fees for the first time, the NRC notes two of its regulations relating to payment. The first regulation is 10 CFR Part 171.19(a) which indicates that the fee payment shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Bills of \$5,000 or more will indicate payment by electronic fund transfer. Payment is due on the effective date of the rule and interest shall accrue 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. The second regulation

relating to payments is 10 CFR Part 15.35 which indicates the NRC assesses interest, penalties and administrative charges on delinquent debts. This regulation also provides for payments of debts in installments provided the debtor furnishes satisfactory evidence of inability to pay a debt in one lump sum. In accordance with these regulations, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

#### V. Environmental Impact: Categorical Exclusion

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

#### VI. Paperwork Reduction Act Statement

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

#### VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final 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). For FYs 1991 through 1995, OBRA-90 requires that approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1993 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 1993 budget of \$540.0 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 recently by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, discussed extensively earlier in this final rule.

#### VIII. 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 final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1993. The final 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 final rule.

#### IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

#### List of Subjects

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. 552 and 553, the NRC is adopting 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 is revised to read as follows:

Authority: 31 U.S.C. 9701; 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 "Materials License" is revised to read as follows:

Materials License means a license, certificate, approval, registration, or other form of permission issued by the NRC pursuant to the regulations in 10 CFR Parts 30, 32 through 35, 39, 40, 61, 70, 71 and 72.

3. A new Section 170.8 is added to read as follows:

§ 170.8 Information collection requirements: OMB approval

This part 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.).

4. 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 1993 budget is \$132 per hour.

5. In § 170.21, the introductory paragraph, Category K, and footnotes 1 and 2 to the table are revised 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 <sup>1/ 2/</sup>
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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
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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

<sup>1/</sup> 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 such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 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 decided lower operating power level and not at the 100 percent capacity.

<sup>2/</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, July 10, 1991, and July 23, 1992 rules as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, 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. In no event will the total review costs be less than twice the hourly rate shown in \$ 170.20.

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6. 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)

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<u>Category of materials licenses and type of fees<sup>1/</sup></u>	<u>Fee<sup>2/, 3/</sup></u>
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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
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:<sup>4/</sup>

Application - New license . . . . .	\$570
Renewal . . . . .	\$670
Amendment . . . . .	\$360
Inspections . . . . .	\$660

- 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:<sup>4/</sup>

Application - New license . . . . .	\$590
Renewal . . . . .	\$420
Amendment . . . . .	\$330
Inspections . . . . .	\$1,100

- 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 for possession and use of source material for shielding:

Application - New license . . . . .	\$220
Renewal . . . . .	\$160
Amendment . . . . .	\$260
Inspections . . . . .	\$550

C. All other source material licenses:

Application - New license . . . . .	\$2,500
Renewal . . . . .	\$1,300
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 . . . . .	\$2,600
Renewal . . . . .	\$1,700
Amendment . . . . .	\$460
Inspections . . . . .	\$9,700 <sup>2/</sup>

- 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 . . . . .	\$1,200
Renewal . . . . .	\$2,200
Amendment . . . . .	\$600
Inspections . . . . .	\$3,000 <sup>2/</sup>

- 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 . . . . .	\$3,300

- 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 . . . . .	\$540
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 . . . . .	\$920
Renewal . . . . .	\$750
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 . . . . . \$5,200  
Renewal . . . . . \$4,700  
Amendment . . . . . \$630  
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 . . . . . \$2,600  
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 . . . . .	\$1,900
Renewal . . . . .	\$1,400
Amendment . . . . .	\$260
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
Renewal . . . . .	\$2,200
Amendment . . . . .	\$620
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 . . . . .	\$2,000
Amendment . . . . .	\$670
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 . . . . .	\$2,800



Amendment . . . . .	\$690
Inspections . . . . .	\$3,500 <sup>2/</sup>

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

Application - New license . . . . .	\$570
Renewal . . . . .	\$670
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 . . . .	\$3,900
Renewal . . . . .	\$2,100
Amendment . . . . .	\$420
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 for the licenses subject to the fees specified in fee 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 . . . . .	\$550
Inspections . . . . .	\$2,200

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 . . . . .	\$2,600
Renewal . . . . .	\$3,500

Amendment . . . . .	\$500
Inspections . . . . .	\$8,600

- 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 . . . . .	\$660
Renewal . . . . .	\$700
Amendment . . . . .	\$480
Inspections . . . . .	\$1,000

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 . . . . \$1,800  
Amendment - each device . . . . \$660  
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 . . . . \$790  
Amendment - each source . . . . \$260  
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:

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
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#### 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
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Renewal . . . . .	N/A
Amendment . . . . .	N/A
Inspections . . . . .	\$/

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<sup>1/</sup>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 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 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

<sup>2/</sup>Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 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.

<sup>3/</sup>Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review

of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, July 10, 1991, and July 23, 1992, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, 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. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

<sup>4</sup>/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.

<sup>2/</sup>For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

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

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.

7. The authority citation for Part 171 is revised 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).

8. In §171.5, the definition "Materials License" is revised to read as follows:

Materials License means a license, certificate, approval, registration, or other form of permission issued by the NRC pursuant to the regulations in 10 CFR Parts 30, 32 through 35, 39, 40, 61, 70, 71 and 72.

9. A new Section 171.8 is added as follows:

§ 171.8 Information collection requirements: OMB approval

This part contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3401 et seq.).

10. Section 171.11 is revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for Federally 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 104 c. 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.

(b) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification of or

questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.

\*\*\*\*\*

(d) The Commission may grant a materials licensee an exemption from the annual fee only if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs. It is the intention of the Commission that such exemptions will be rarely granted. The following factors must be fulfilled as determined by the Commission for an exemption to be granted:

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees; or

(2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decisions; or

(3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

11. 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 1993 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1993, are shown in paragraph (d) of this section.

(c) \*\*\*

(2) The FY 1993 surcharge to be added to each operating power reactor is \$\_\_\_\_\_. This amount is calculated by dividing the total cost for these activities (\$\_\_\_\_\_ million) by the number of operating power reactors (109).

(d) The FY 1993 Part 171 annual fees for operating power



reactors are as follows:

Part 171 Annual Fees by Reactor Category<sup>1</sup>

(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	\$	\$	\$	\$
Combustion Eng.	15				
GE Mark I	24				
GE Mark II	8				
GE Mark III	4				
Westinghouse	<u>51</u>				
Totals	109				\$

<sup>1</sup>Fees 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	\$ _____
Test reactor	\$ _____

\*\*\*\*\*

12. 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 1993 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
<u>Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)</u>	
20,000 to 50,000	\$1,800
Less than 20,000	\$400
<u>Educational Institutions that are not State or Publicly Supported, and have 500 Employees</u>	\$1,800

or Less.

\*\*\*\*\*

(4) The maximum annual fee (base annual fee plus surcharge) a small entity is required to pay for FY 1993 is \$1,800 for each category applicable to the license(s).

(d) The FY 1993 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)

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<u>Category of materials licenses</u>	<u>Annual Fees</u> <sup>1, 2, 3</sup>
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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	\$
Nuclear Fuel Services	SNM-124	70-143	
<u>Low Enriched Fuel</u>			
B&W Fuel Company	SNM-1168	70-1201	
Combustion Engineering (Hematite)	SNM-33	70-36	

General Electric Company SNM-1097	70-1113
Siemens Nuclear Power SNM-1227	70-1257
Westinghouse Electric Co. SNM-1107	70-1151

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Surcharge . . . . . \$

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. \$

Surcharge . . . . . \$

B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). \$146,600

Surcharge . . . . . \$120

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. \$1,600

Surcharge . . . . . \$120

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). \$1,800

Surcharge . . . . . \$

E. Licenses for the operation of a  
uranium enrichment facility. \$ N/A<sup>11/</sup>

2. Source material:

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

Surcharge . . . . . \$

(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<sup>4</sup> . . . . . \$58,100

Class II facilities<sup>4</sup> . . . . . \$25,400

Other facilities . . . . . \$21,100

Surcharge . . . . . \$120

B. Licenses which authorize only the possession, use and/or installation of source material for shielding. \$680

Surcharge . . . . . \$120

C. All other source material licenses. \$7,600

Surcharge . . . . . \$

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. \$17,000

Surcharge . . . . . \$

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. \$5,000

Surcharge . . . . . \$

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.

\$10,500

Surcharge . . . . . \$

D. Licenses and approvals issued pursuant  
to §§ 32.72, 32.73, and/or 32.74 of  
this chapter authorizing distribu-  
tion or redistribution of radiophar-  
maceuticals, 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.

\$5,200

Surcharge . . . . . \$120

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). \$3,700

Surcharge . . . . . \$120

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. \$4,700

Surcharge . . . . . \$120

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. \$21,900

Surcharge . . . . . \$120

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. \$6,000

Surcharge . . . . . \$120

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. \$10,900

Surcharge . . . . . \$120

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. \$5,800

Surcharge . . . . . \$120

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. . . . . \$5,100

Surcharge . . . . . \$120

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. \$12,900

Surcharge . . . . . \$

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. \$4,400

Surcharge . . . . . \$

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. \$5,200

Surcharge . . . . . \$

- 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. \$17,200

Surcharge . . . . . \$120

- P. All other specific byproduct material licenses, except those in Categories 4A through 9D. \$2,000

Surcharge . . . . . \$120

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. \$113,400<sup>2/</sup>

Surcharge . . . . . \$

- 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. \$14,100

Surcharge . . . . . \$

- 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. \$6,600

Surcharge . . . . . \$

- 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 for licenses subject to the fees in Category 2.A.(2). \$7,600

Surcharge . . . . . \$

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. \$11,100

Surcharge . . . . . \$120

B. Licenses for possession and use of  
byproduct material for field flooding  
tracer studies. \$13,500

Surcharge . . . . . \$

6. Nuclear laundries:

A. Licenses for commercial collection and  
laundry of items contaminated with  
byproduct material, source material,  
or special nuclear material. \$13,700

Surcharge . . . . . \$

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. \$14,400

Surcharge . . . . . \$120

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.<sup>g/</sup> \$26,400

Surcharge . . . . . \$

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.<sup>9/</sup>

\$5,000

Surcharge . . . . . \$120

8. Civil defense:

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

\$1,800

Surcharge . . . . . \$120

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. \$8,400

Surcharge . . . . . \$120

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. \$4,100

Surcharge . . . . . \$120

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. \$1,800

Surcharge . . . . . \$120

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.	\$910
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Surcharge . . . . .	\$120
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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 plutonium air packages	N/A <sup>6/</sup>
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Other Casks	N/A <sup>6/</sup>
-------------	-------------------

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

Users and Fabricators	\$67,400
Users	\$1,000

Surcharge . . . . .	\$120
11. Standardized spent fuel facilities.	N/A <sup>6/</sup>
12. Special Projects	N/A <sup>6/</sup>
13. A. Spent fuel storage cask Certificate of Compliance.	N/A <sup>6/</sup>
B. General licenses for storage of spent fuel under 10 CFR 72.210.	\$146,600
Surcharge . . . . .	\$120
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 <sup>2/</sup>
15. Import and Export licenses	N/A <sup>6/</sup>
16. Reciprocity	N/A <sup>6/</sup>
17. Master materials licenses of broad scope issued to Government agencies.	\$358,400
Surcharge . . . . .	\$23,820

18. DOE Certificates of Compliance . . . . . \$1,013,000<sup>10/</sup>

Surcharge . . . . . \$120

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<sup>1/</sup> Amendments based on applications filed after October 1 of each fiscal year that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee for that fiscal year or any portion thereof for the fiscal year filed. The annual fee will be waived where the license is terminated prior to October 1 of each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to October 1 of each fiscal year.

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. 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 those 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.

<sup>2/</sup> 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.

<sup>3/</sup> For FYs 1994 and 1995, 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.

<sup>4/</sup> 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.

<sup>5/</sup> 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.

<sup>6/</sup> 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 added 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 \$\_\_\_\_\_ has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$\_\_\_\_\_ has been added to fee Categories 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 \$\_\_\_\_\_ has been added to

fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of \$120 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 \$120 additional charge.

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

§ 171.19 Payment.

\*\*\*\*\*

(b) For FY 1993 through FY 1995, 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. In the event 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 shall accrue 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 1993 through 1995, annual fees in the amount of \$100,000 or more and described in the Federal Register Notice pursuant to § 171.13, shall 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 shall be paid once a year as billed by the NRC.

Dated at Rockville, Maryland this \_\_\_\_ day of \_\_\_\_\_, 1993.

For the Nuclear Regulatory Commission.

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James M. Taylor,  
Executive Director for Operations.

APPENDIX A TO THIS FINAL 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. For FY 1991, the amount collected was approximately \$445 million, and for FY 1992, the amount collected was approximately \$492.5 million. The amount to be collected in FY 1993 is approximately \$518.9.

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) and FY 1992, (57 FR 32691; July 23, 1992) based on

a careful evaluation of over 500 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991 and FY 1992. The NRC has used the same methodology established in the FY 1991 and FY 1992 rulemakings to establish the fees to be assessed for FY 1993.

## II. Impact on small entities.

The comments received on the proposed FY 1991 and FY 1992 fee rule revisions and the small entity certifications received in response to the final FY 1991 and FY 1992 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 and FY 1992 fee rules.

The commenters on the FY 1991 and FY 1992 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 two years, approximately 2,300 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.

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) and the FY 1992 rule (57 FR 32691; July 23, 1992). 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 and FY 1992 evaluation of the above 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 continuing 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 1993, the NRC will 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 final rule for FY 1993, the NRC concludes that the 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 1993 costs (\$29.8 million of the total \$35.1 million) attributable to them. Therefore, the NRC is continuing, for FY 1993, 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, the NRC will continue for FY 1993 the lower-tier small entity fee of \$400 for small entities with relatively low gross annual receipts established in the final rule dated 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 and FY 1992 fee rules in this final rule establishing the FY 1993 fees. Therefore, the analysis and conclusions established in the FY 1991 and FY 1992 rules remain valid for this final rule for FY 1993.

procedures developed for the FY 1991 and FY 1992 fee rules in this final rule establishing the FY 1993 fees. Therefore, the analysis and conclusions established in the FY 1991 and FY 1992 rules remain valid for this final rule for FY 1993.

Dated at Rockville, Maryland this \_\_\_\_ day of \_\_\_\_\_, 1993.  
For the Nuclear Regulatory Commission.

\_\_\_\_\_  
James M. Taylor,  
Executive Director for Operations.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

6/28/93

RIN: 3150-AE

AE 49-2  
PDR

FY 1991 and 1992 Final Rule Implementing  
the U.S. Court of Appeals Decision and  
Revision of Fee Schedules; 100% Fee Recovery, FY 1993

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The 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) 1993 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1993 is approximately \$518.9 million.

In addition, the NRC is implementing the March 16, 1993, U.S. Court of Appeals for the District of Columbia Circuit decision remanding to the NRC portions of the FY 1991 annual fee rule. The remanded portions pertain to: (1) the NRC's decision to exempt <sup>from annual fees</sup> nonprofit educational institutions, but not other enterprises, on the ground in part that educational institutions are unable to pass through the costs of annual fees to their customers; and (2) the Commission's decision to allocate generic

costs associated with low-level waste (LLW) disposal by groups of licensees, rather than by individual licensee. The NRC in this final rule has ~~revoked the exemption from annual fees for~~ <sup>retroactive to 1991</sup> nonprofit educational institutions and has changed its method of allocating the budgeted cost for low-level waste activities. ~~The NRC believes~~ <sup>T</sup> these approaches are consistent with the court's decision. Because the court's decision was also extended to cover the NRC's FY 1992 annual fee rule by subsequent Court order, ~~this final rule addresses the FY 1992 rule as well.~~

EFFECTIVE DATE: (30 days after publication)

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. Response to Comments.
- III. Final Action -- Changes Included In Final Rule.
- IV. Section-by-Section Analysis.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.
- IX. Backfit Analysis.

Subsequent to enactment of OBRA-90, the NRC published three 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 method for determining 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, ~~and~~ the U.S. Court of Appeals for the District of Columbia Circuit ~~decided the~~ *reversed its decision* ~~lawsuits~~ on March 16, 1993. The Court decision was also extended *dated April 30, 1993* to cover the FY 1992 fee rule by ~~subsequent~~ court order. *A* The Court case and the NRC's response to the issues remanded by the court are discussed in Section II of this final rule.

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 adjusted 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), the NRC published a final rule 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. The basic methodology used in the FY 1992 final rule 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).

*(enacted in October 1992)*

Section 2903(c) of the Energy Policy Act<sup>1</sup> requires the NRC to *undertake a broad* review *of* ~~its policy for assessment of~~ annual fees<sup>2</sup> *policy* under Section 6101(c) of OBRA-90, solicit public comment on the need for *policy* changes ~~to this policy~~, and recommend changes in existing law to the Congress that the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC published for public comment a separate notice in the Federal Register on April 19, 1993 (58 FR 21116-21121). The 90-day public comment period for this notice expires on July 19, 1993.



*no of 1993  
to collect  
prior to October 1, 1993  
commission  
promulgated before  
the user see review mandated by the  
energy policy act. Any change in  
commission policy resulting  
from this  
review  
will be  
incorporated  
in fee  
schedule  
promulgated  
in future  
years*

On April 23, 1993 (58 FR 21662), the NRC published the ~~version of a~~ <sup>establishing</sup> proposed rule that presented the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1993 less the appropriation received from the NWF. The basic methodology used in the proposed rule 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 set forth in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691). The NRC placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L Street, NW, Washington, D.C., in the lower level of the Gelman building. Workpapers relating to this final rule will also be placed in the Public Document Room.

## II. Responses to comments.

*cannot period  
expired  
on May  
24, 1993  
NRC  
received  
evaluated*

The NRC received more than 500. ~~A~~ public comments ~~by the close of the~~ comment period on May 24, 1993, and an additional although the ~~comments~~ by ~~the close of business on June~~ received, 1993. These comments were evaluated in the development of this final rule.

Of the received comments, received prior to June 25. ~~\_\_\_\_\_~~ were from power reactor licensees or their representatives and ~~\_\_\_\_\_~~ were from persons concerned with other types of licenses, including ~~\_\_\_\_\_~~ from nonprofit educational institutions or their representatives. Copies of all comment letters received are available for inspection in the NRC Public Document Room, 2120 L Street, NW (lower level) Washington,

D.C.

Many of the comments were similar in nature. For evaluation purposes, these comments have been divided into two groups. The first group deals with the two remand issues of the U.S. Court of Appeals for the District of Columbia Circuit case decided on March 16, 1993. The second group deals with the remaining comments on the FY 1993 proposed rule. They are as follows:

A. Comments Regarding U.S. Court of Appeals for the District of Columbia Circuit Remand Decision -- FY 1991 -- FY 1993 Fee Schedules.

1. Taking Account of Licensees' Ability to Passthrough Fee Costs to Customers.

*in part*  
Comment. A number of comments were received on the question of setting NRC annual fees in part on the basis of whether the licensee can pass through the costs of those fees to its customers. The NRC had proposed abandoning the passthrough concept, which it *previously* had used to justify its fee exemption for certain nonprofit educational institutions, on the grounds that to evaluate <sup>each</sup> licensee's passthrough ability was an impossible and required expertise and information unavailable to the agency.

*administrative task*

Many commenters supported the NRC's approach of not setting any license fees on the basis of passthrough, due to the difficulties inherent in its use ~~(entergy)~~. One stated that to do otherwise would be cumbersome and subjective, and cause fees to vary in response to changing market conditions ~~VA of MTR~~. Another commenter noted that if passthrough were used, the exempted fees would almost certainly be paid by power

reactors, which have trouble passing on their costs due to fee schedules established by public utility commissions ~~(Penn. P&A)~~. One commenter stated that if foreign competition were the problem, Congress and not the NRC was the proper forum in which to seek relief for passthrough considerations ~~(TU Electric)~~.

Another group of commenters disagreed with the NRC's suggested approach, and argued that passthrough should be considered when devising a fee schedule. Many domestic uranium producers told the NRC that their industry cannot pass through costs to customers due to foreign competition, lower demand and long-term fixed price contracts ~~(B&W, AMC, Rio Algom, Combustion Engineering)~~. Another commenter suggested that nuclear medicine departments should be eligible for exemption from fees due to passthrough considerations. They are often reimbursed for patient care by the Health Care Financing Administration, which does not take NRC fees into account ~~(ACNP/SNM)~~. Commenters also claimed that, contrary to the NRC's stated position, the agency does have the necessary expertise to evaluate licensees' passthrough capacity and must do so under both OBRA-90 and the March 16, 1993, Court of Appeals decision ~~(B&W, CE, AMC, Rio Algom, Allied-Signal)~~. One commenter stated that the NRC could simply request an affidavit from the licensee explaining how the licensee was unable to pass through its fee costs ~~(Rio Algom)~~.

Response. After carefully considering the comments received on this difficult issue, the Commission has decided to adopt its proposal not to use passthrough as a factor for any licensee when setting that licensee's fee schedule. The Commission recognizes that all licensees dislike paying user fees and that such fees

the subtle and complex inquiry whether in a market economy particular licensees can or cannot easily recapture the costs of annual fees from their customers

must be taken into account as part of running a business or other enterprise. However, the Commission does not believe it has the expertise or information needed to undertake ~~what is an impossible task.~~ As it stated in the proposed rule, the Commission "is not a financial regulatory agency, and does not possess the knowledge or resources necessary to continuously evaluate purely business factors. Such an effort would require the hiring of financial specialists and . . . could [lead to] higher fees charged to licensees to pay for an expanded bureaucracy to determine if . . . licensee[s] can pass on the cost of [their] fees." 58 Fed. Reg. 21662-4 (1993).

stated

Although in the final FY 1991 annual fee rule the Commission ~~claimed~~ that passthrough was a factor ~~for~~ justifying the exemption of nonprofit educational institutions from fees, the Commission had no empirical data on which it based its belief that colleges and universities ~~could~~ not pass through fee costs. Rather, it acted ~~purely~~ <sup>primarily</sup> on policy grounds, in an effort to aid nuclear-related education for the benefits it provides to the nuclear industry and society as a whole. ~~The~~ <sup>Moreover, in the</sup> Commission now acknowledges that these institutions can compensate for the existence of NRC fees, by means of higher tuition (prices) or budget cuts, in the same manner as profit-oriented licensees.

reflecting

The Commission disagrees with those commenters who claim the NRC must set fees at least in part on the basis of passthrough considerations. In its decision, the D.C. Circuit clearly stated that "[t]he statutory language and legislative history [of OBRA-90] do not, in our view, add up to an inexorable mandate to protect classes of licensees with limited ability to pass fees

forward." Allied-Signal at 5. The court went on to say that "[b]ecause [price] elasticities are typically hard to discover with much confidence, the Commission's refusal to read [OBRA-90] as a rigid mandate to do so is not only understandable but reasonable." Allied-Signal at 6-7. *The Commission agrees with these observations, which defeat the suggestion that the Commission has a statutory obligation to exempt licensees who cannot*

*7. After full consideration of the Commission's passthrough guidelines, the Commission has concluded that there is no licensee for whom it can set fees using passthrough considerations with reasonable accuracy and at reasonable cost.* *pass through their fees to customers.*

If the Commission were to attempt such an endeavor, it would require a comprehensive, on-going audit of that licensee's business and the industry of which it was a part. The Commission would have to examine tax returns, financial statements, and other <sup>Commercial</sup> ~~potentially confidential~~ <sup>data</sup> that <sup>some</sup> licensees might be loath to reveal. ~~And~~ <sup>Even if</sup> the Commission

could obtain all the necessary information, it does not have the <sup>business</sup> ~~expertise~~ <sup>or the resources</sup> to accurately evaluate ~~that~~ <sup>at</sup> information in order to make a passthrough

determination. If the Commission cannot do this for one licensee, it certainly cannot do it for nearly 7,000. Because this is the case, the Commission will not establish fees or base any exemptions on the alleged inability of a licensee to pass through fee costs to its customers. ~~It~~ <sup>This</sup> policy applies to all

licensees, including those companies with long-term, fixed price contracts. In that regard, the Commission notes that companies who do business using such <sup>like all other enterprises outside the American economy,</sup> contracts, are continuously liable for changes in the tax codes and other Federal and State regulations that occur subsequent to the commencement of these contracts. The Commission believes the current situation is no different. The Commission is sympathetic to licensees' complaints on the passthrough

The Commission could not simply rely on self-serving statements by licensees themselves on passthrough problems, without jeopardizing the integrity of the 100% fee recovery system mandated by Congress. Instead, the Commission would have to verify its licensees' submissions.



issue, but believes that it has no other choice but to pursue the course of action it has chosen.

2. Fee Exemption for Nonprofit Educational Institutions.

<sup>(insert #1)</sup>  
Comment. The Commission received a ~~smaller than~~  
~~expected number of~~ comments on the question of  
continuing the exemption from fees for nonprofit  
educational institutions. The Commission solicited  
comments from colleges and universities, and other  
interested parties, on whether to continue this  
exemption and on what grounds. The Commission had  
proposed continuing the exemption solely on the grounds  
that nuclear-related education provides a benefit both  
to the nuclear industry and society at large. See  
Final FY 1991 Rule, 56 FR 31477 (1991). ~~As a result of~~  
~~the court decision,~~ The Commission ~~also~~ requested <sup>in particular</sup>  
comments on the court's suggestion that education might  
provide "externalized benefits that cannot be captured  
in tuition or other market prices." Allied-Signal at  
8. ~~Finally,~~ <sup>also</sup> The Commission ~~solicited comments on the~~  
~~option of doing away with the exemption entirely.~~

Many of the comments received on this issue supported retaining the exemption for nonprofit educational institutions. These commenters, mostly colleges and universities, asserted that they provide a great benefit to society through nuclear-related education, and that they would be hardpressed to sustain their programs in the face of newly imposed fees. Some claimed that if the exemption were removed, they would be forced to shut down or drastically curtail their nuclear education programs. One commenter suggested that if fees were to be charged, that it be done on a graduated basis, presumably to lessen the burden on

"invited" public  
comments on  
w. (to discontinue  
the educational  
exemption entirely,  
58 Fed. Reg.  
21664 (1993).



certain licensees [~~Wright State University~~]. Another made the point that fees should not be charged to programs receiving support from the Federal government in other ways [~~UVA~~]. Some commenters urged not only keeping the exemption in place, but expanding it to include museums and other nonprofit institutes... [~~Cleveland Museum of Art, Marine Biological Laboratory~~]. No commenter, however, addressed in any meaningful detail the "externalized benefits" point made by the court in its opinion.

Other commenters instead argued that the exemption should be abandoned. A nonprofit institute asserted that if it had to pay fees to the NRC, others should as well. It believed that if all nonprofit educational institutions paid "their fair share," the fee burden on those institutions would be lowered [~~Dana-Farber Cancer Institute~~]. Similarly, a nonprofit hospital called for ending the educational exemption, to create a more equitable fee schedule. The commenter also believed that the exemption penalized those nonprofit hospitals competing for scarce research funds and limited numbers of patients [~~West Penn Hospital~~]. Another commenter, a utility, made the argument that the NRC should only be concerned with guarding the public health and safety, not subsidizing colleges and universities. It too called for an end to the exemption [~~Duke Power~~]. And a major fuel facility asserted that the NRC had no discretion to exempt colleges and universities from paying fees, and that the exemption should be discontinued [~~Allied-Signal~~].

that  
were  
not  
covered  
by the  
educational  
exemption

*insert* Response. Although the Commission had proposed retaining the exemption for nonprofit educational institutions, it does not believe it can now do so in

97 The court's Whitely-Small decision suggested that the NEE might be able to justify a generic exemption for educational institutions on the theory that "education yields exceptionally large externalized benefits that cannot be captured in tuition or other market prices." The Commission understands this to <sup>require</sup> ~~mean~~ <sup>that</sup> ~~that~~ <sup>that</sup> nuclear education is <sup>as a</sup> ~~an~~ <sup>is</sup> much more valuable <sup>than</sup> ~~than~~ <sup>what</sup> ~~what~~ <sup>students were willing to pay for it.</sup> <sup>on the private market</sup> ~~on the private market~~ <sup>a showing</sup> ~~a showing~~ <sup>general</sup> ~~general~~ <sup>rather</sup> ~~rather~~

~~the face of both the court decision and the administrative record developed during the disappointing number and quality of comments received on this aspect of the rule.~~

~~Cannot justify a generic exemption for a generic "educational" exemption for FY 1993. Nor can it adequately substantiate the generic exemption previously allowed in FYs 1991 and 1992.~~

→ Although the Commission had <sup>anticipating</sup> ~~expected~~ that these colleges and universities benefitting from the exemption would take up the Commission's invitation to discuss and elaborate upon the "externalized benefits" point made by the court, they did not do so. <sup>lack</sup> ~~As a~~

result, the Commission ~~does not believe that it has an~~ adequate administrative record on which to base a continued <sup>generic</sup> ~~exemption of~~ nonprofit educational institutions. <sup>is</sup> ~~This is especially true in light of the~~

court decision, which forced the Commission to acknowledge the serious weakness of, and abandon, the passthrough argument formerly made on behalf of these institutions. As the Commission has stated above, that argument was not based on empirical data, <sup>passthrough argument is irrelevant,</sup> ~~and cannot~~

is an unreasonable standard for setting around fees.

~~withstand close scrutiny.~~ Without either the passthrough rationale or <sup>or</sup> ~~persuasive~~ <sup>"externalized benefits"</sup> ~~comments from those~~ <sup>valuable</sup> ~~who are the subject of the exemption,~~ the Commission has no choice but to charge colleges and universities fees appropriate to their status as licensees.

Not does the Commission have in hand sufficient economic data, nor analysis, to support for issuing or across-the-board exemption to nonprofit educational institutions.

<sup>Cannot conclude on the current record that</sup> ~~The Commission does not believe a competitive argument can be made that education produces benefits not provided by any other type of licensee.~~ <sup>generally</sup> ~~As the~~ <sup>benefits that</sup> ~~comments and court decision indicated, many other~~ <sup>are</sup> ~~licensees can claim that they provide important~~ <sup>very externalized</sup> ~~benefits to society that are worthy of fee exemptions.~~ <sup>benefits</sup>

<sup>and</sup> ~~In particular, the Commission would be hardpressed to explain why nonprofit hospitals, and nuclear medicine in general, do not provide societal benefits that are the equal of any provided by educational institutions.~~ ~~and Without such a means of differentiating these~~

*Based on the record currently before the agency,*

*all other NRC licensees, including*

groups of licensees from one another, any rationale for singling out education for fee-exempt status would almost surely fail if ~~it~~ challenged. *A* The Commission acknowledges the seeming paradox in charging fees to a program that receives support from other agencies of the Federal government. However, it believes that it has no choice, given 100 percent recovery requirements and fairness and equity, but to charge all licensees whenever possible. For instance, the NRC levies both annual and user fees on ~~other~~ nonprofit, tax-exempt entities such as hospitals, museums and institutes. Furthermore, the NRC also directly charges annual fees to other Federal government agencies such as the ~~Veterans Administration~~ *Department of Veterans Affairs*, the National Institutes of Health and the ~~armed forces~~ *Department of Defense*. Charging annual fees to colleges and universities is consistent with the Commission's preferred approach to fee recovery.

The Commission was also struck by the ~~number of~~ *2* comments that attacked the educational exemption and urged its abandonment. Because those arguments were made by organizations such as hospitals, utilities and fuel facilities that presumably benefit from an educated nuclear workforce, the Commission read these comments as an indication that ~~they~~ *at least some* assumed beneficiaries of education ~~did~~ *do* not view it quite as positively as the Commission had believed. This in turn strengthened the Commission's view that ~~simply~~ *alone one* citing the benefits of education to society ~~would not~~ be enough to ~~uphold the exemption. absent other~~ *support a general* compelling evidence. ~~Because no such evidence was provided by commenters, the Commission's only course of action is clearly to eliminate the educational exemption.~~

SRM language here

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On a ~~practical~~ practical note, the Commission has concluded that by eliminating the exemption for past years, it must refund the money paid by those licensees charged fees that would otherwise have been paid by the colleges and universities. As a result, the Commission <sup>upon request will refund to</sup> ~~will be refunding to~~ power reactor licensees <sup>portion of</sup> those fees paid by them in FY 1991 and FY 1992 to cover the annual fees of the exempted educational institutions. ~~Because the Part 170 IOAA exemption was not challenged or ruled upon in the Allied Signal case, money collected from the reactors under that exemption will not be refunded. For purposes of consistency, however, the Commission intends in the near future to abolish this exemption as well through notice and comment rulemaking. It is not doing so at this time because it did not offer this option for public comment in the FY 1993 proposed rule.~~

Insert A

See 2. TBR  
180  
TBR  
TBR  
TBR

### 3. Allocation of Low-Level Waste Costs.

Insert B

Comment. Comments were received in support of each of the four alternatives for allocating Low Level Waste (LLW) costs that were included in the proposed rule. Some commenters also recommended variations of the four basic alternatives. The alternatives were:

- (1) Assess all licensees that generate LLW a uniform annual fee.
- (2) Allocate the LLW budgeted cost based on the amount of LLW disposed of by groups of licensees and assess each licensee in a group the same annual fee as was done in the FY 1991 and FY 1992 rules.
- (3) Assess each licensee an annual fee based on the amount of waste generated/disposed by the

the Commission will not (and by law cannot) retroactively collect ~~these~~ fees from the educational institutions for FYs 1991 and 1992.



*redrawn  
of [unclear]  
on [unclear]*

individual licensee, as was suggested by Allied-Signal and by the court.

- There was no consensus among the commenters regarding a preferred option again the Commission is faced with a difficult policy decision.*
- (4) Base the LLW annual fees on curies generated or disposed of.

Commenters that supported Alternative 1 (uniform fee) argued primarily that the real benefit of LLW disposal is merely the availability of such services and classes of generators have a need for this availability. In support of this argument, commenters noted that if one class of licensee (e.g., power reactors) did not exist, there would still be the same need for a regulatory framework for future disposal, and the need is independent of the amount of waste being generated today. The cost relationship to the volume of waste disposal, according to these commenters, is a contractual matter best handled between the vendor and customer. That is, the benefit will be reflected in the fees that those licensees will be required to pay to the vendors when disposing of their LLW. Most of the commenters that supported alternative 1, believed that Alternatives 3 and 4 were not acceptable because of the problems associated with the equitable distribution of the annual fee to all applicable licensees. Commenters noted that the inequities in this approach are that some licensees are storing, either by choice or regulation, their LLW. Some commenters believe that Alternative 2 is not equitable, given the uniform need among all classes of LLW generators for a regulatory framework for future LLW disposal.

Several commenters supported Alternative 2 (uniform fee by groups of licensees) as the best and fairest method

among the four alternatives. One commenter stated that this is the best alternative in terms of its fairness to licensees of different sizes and different types of waste, while not being too cumbersome to effectively implement. They indicated that, although not exact by specific licensee, Alternative 2 provides enough information to reasonably provide an equitable method for allocating fees at the present time among those who will derive future benefits from regulatory services associated with low level waste. Commenters noted that the current volume of LLW disposed of by each class is the best gross indicator of the relative future benefit of LLW disposal sites to licensees. Other commenters preferred Alternative 2 because it is the clearest and most predictable to the waste generator and easiest for the NRC to administer. These commenters also noted that calculating the annual LLW surcharge based on individual licensees' current volume of waste (Alternative 3) would be administratively burdensome and might not bear a close relationship to the amount of waste those licensees will generate in the future.

Several commenters supported Alternative 3 which would base the LLW surcharge on the amount of waste generated or disposed by each individual licensee. These commenters believe that Alternative 3 should be adopted, since the NRC has not provided sufficient reasons to deviate from the <sup>individualized</sup> approach suggested in the decision by the U.S. Court of Appeals. They state that the other three alternatives are unfair.

One commenter supported Alternative 4; ~~that of~~ basing the LLW surcharge on the curies of waste generated. Other commenters, however, indicated that curies generated is not a good indicator of the regulatory



benefits of the NRC regulatory program. One commenter suggested a combination of Alternatives 1, 3 and 4 such that the fee assessment for LLW would include a minimum fee for all users with the largest portion of the fee being calculated based on volume generated with an additional assessment for activity (Class B and C waste) which would require stricter long term monitoring at any storage facility.

Response. Based on an evaluation of the comments, the Commission concludes that on balance a <sup>variant</sup> ~~combination~~ of Alternatives ~~1 and 2~~ provides a fair and equitable allocation of the NRC LLW costs to the various NRC licensees. The Commission has concluded that there should be two LLW surcharges -- one for large waste generators and another for small waste generators. This conclusion reflects (1) the purpose of NRC activities whose costs are included in the surcharge; and (2) existing data on which to base the fees; and <sup>the</sup> ~~the~~ Commission's duty to allocate fee burdens fairly and equitably.

The purpose of FY 1991 - FY 1993 LLW waste activities is to implement Low-Level Radioactive Waste Policy Amendments Act of 1985, and the Atomic Energy Act, which requires the NRC to perform certain generic activities. These activities include developing rules, policies and guidance, performing research, and providing advice and consultation of LLW compacts and Agreement States who will license some of the future LLW disposal sites. The budgeted costs for <sup>most</sup> ~~these~~ types of <sup>NRC</sup> generic activities are generally recovered in annual fees from the class of licensees to whom the activities directly relate. (For example, reactor research is recovered from reactor licensees, and guidance and rule development for regulation of uranium producers is recovered from uranium recovery licensees.) However,

for LLW generic activities, there is no disposal site licensed by the NRC from whom to recover the generic budgeted costs that must be incurred.<sup>1</sup> Since there is no LLW disposal site licensee, these costs must be allocated to other NRC licensees in order to recover 100% of the NRC budget as required by ORBR-90. In addition, the LLW costs budgeted by NRC in FY 1991, FY 1992 and FY 1993 are not for the wastes being disposed during these years or prior years, but are devoted to creating the regulatory framework for disposal of LLW at some future date.<sup>2</sup> In fact, the sites where LLW was disposed of in FY 1991-1993 are licensed and regulated by Agreement States, not the NRC.

Given the 100 percent budget recovery requirement of OBRA-90, and the fact that there are no NRC LLW licensees from whom to recover FY 1991-1993 budgeted costs for NRC generic activities, the basic question is how should NRC allocate these costs. Congress spoke briefly to this issue in developing OBRA-90 by recognizing that certain expenses cannot be attributed directly either to an individual licensee or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge, even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in

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1 There are organizations that hold a NRC license for the disposal of Special Nuclear Material (SNM). The LLW at issue is not SNM, but other byproduct and source materials.

2 In the FY 1991 rule, the NRC indicated that "once the NRC issues a license to dispose of byproduct LLW, the Commission will reconsider the assessment of generic costs attributable to LLW disposal activities" (56 FR 31487; July 10, 1991).

its discretion, determines can fairly, equitably, and practicably contribute to their payment. 1356 Cong Rec. at H12692, 3.

Consistent with the Congressional guidance, the Commission believes that the LLW surcharge should be allocated based on the fundamental concept that all classes of NRC licensees which generate a substantial amount of LLW should be assessed annual fees to cover the agency's generic LLW costs. Each of the alternatives in the proposed rule which were endorsed by various commenters, supports, to varying degrees, this allocation concept and provides various degrees of fairness and equity because of available data and the inherent limitations of the method allocation itself.

Alternative 4 <sup>is "CUEIS" approach</sup> had little support from the commenters and the Commission believes is the least preferable alternative since volume is at least as good of an indicator, <sup>industry</sup> probably a better indicator, of the benefits <sup>of</sup> from the NRC generic low level waste activities. In addition, volume is more practical to implement.

Cost allocation by  
Alternative 3 and 4, reallocating LLW disposal costs on an individual rather than class basis, <sup>may</sup> appear <sup>to some</sup> fairer than the current system, since each licensee would pay a fee more precisely tied to the amount of waste it currently generates or disposes of. The Commission, however, sees significant problems in an individualized approach, given the data the NRC has for FYs 1991-1993. As indicated by some of the commenters, the NRC has data on the amount of LLW disposed <sup>of</sup> by individual licensees. However, currently the NRC does not have <sup>data on</sup> the amount of waste generated for each of the over 1,000

individual licensees that generate LLW.<sup>3</sup> The Commission also believes that it is not practical, and probably not even possible, to retroactively ~~create~~ <sup>determine</sup> the amount of waste generated by each individual licensee for FY 1993 and prior years since the time to capture such data has passed for many licensees.

The Commission has concluded that using available individual waste disposal data would result in grossly unfair annual fees since some licensees that generate LLW would not pay any fees. This would occur because some licensees are prohibited from disposing of their waste or because they choose not to do so for the near term. Increasingly, for example, licensees (such as those in Michigan) cannot dispose of their waste because of restrictions in the LLW Policy Act.<sup>4</sup> Thus, given the current situation with LLW disposal in the U.S., basing fees on individual disposal data could, in the Commission's view, result in some licensees paying the full generic costs of future LLW licensing, while <sup>And some paying nothing</sup>

its LLW and other programs

<sup>would be</sup> The Commission is evaluating whether ~~on a programmatic basis~~, it is beneficial to obtain individual LLW generation data. If the <sup>Does acquisition</sup> ~~acquisition~~ of such data, ~~would be otherwise beneficial~~, then the Commission would evaluate whether such data could form the basis for a revised approach for assessing the LLW surcharge. Commission

"The Secretary of Energy stated in his "1991 Annual Report on Low-Level Waste Management Progress" that:

As States continued to work toward providing management and disposal capability for their low-level radioactive waste, they also grappled with the possibility of no longer having access to the low-level radioactive waste disposal facilities now operating in Nevada, South Carolina, and Washington after December 31, 1992. The Act allows those three sites to close at the end of 1992. Should this occur, on January 1, 1993, as much as 90 percent of the volume of the Nation's low-level radioactive waste not disposed by that date could be required to be stored at the point of generation, which would raise numerous health, safety, financial, and legal issues.



all licensees that generate LLW will benefit from the NRC generic LLW activities. In addition to being unfair, using individual disposal data would result in the significant administrative burden of "translating" raw and coded disposal data on computer printouts into usable licensee-by-licensee bills.

Some commenters point out that although the use of disposal data could result in some licensees paying no fees, they would be charged disproportionately high annual fees in the future when they do dispose of their LLW. This is not necessarily true, since many of the ongoing LLW generic activities are not recurring-type activities.<sup>5</sup>

Alternative 2<sup>1</sup>, <sup>class-based approach</sup> would eliminate the major negative associated with Alternative 3. That is, each licensee that generates waste would pay an annual fee to recover the NRC costs that are necessary to establish and maintain a regulatory program for LLW disposal, using the average amount of waste disposed per licensee <sup>in each</sup> ~~is by~~ <sup>of license</sup> ~~a class~~ as a proxy for generation. This <sup>however,</sup> has drawbacks for those classes with a relatively small number of licensees, such as the fuel facilities. <sup>As</sup> several commenters noted, Alternative 1 <sup>'s flat fee approach</sup> is consistent with the purpose of the FY 1991-1993 LLW activities. However, the guidance ~~from~~ the Congress of fairness and equity dictates that the NRC not charge the same fee for those groups of licensees that are likely to generate <sup>of</sup>

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<sup>5</sup>For example, once the research, performance assessment, or development of rules and regulatory guides is completed, the staff does not expect to perform that work again in the future. Therefore if licensees pay in the future they would ~~not be required to pay for~~ these generic regulatory costs. <sup>escape paying their share</sup>

significantly different amount<sup>5</sup> of LLW. Because the NRC does not have sufficient data on LLW generated to make a refined differentiation by individual licensee or small groups, the Commission believes that ~~this can be~~ <sup>finances and eq. by best</sup> accomplished by ~~creating two groups~~ <sup>and charging each a flat fee 1/10 of</sup> large ~~generators~~ <sup>generators</sup> and small generators. ~~The large generators would be~~ <sup>comprised of power reactors and large fuel facilities. The</sup> ~~comprised of power reactors and large fuel facilities.~~ <sup>small generators consist of all other LLW-producing licensees</sup> The amount of the costs allocated to the two groups would be based on the historical average of the amount of waste disposed <sup>over the — — — year period</sup>. Within these two groups, each licensee would pay the same LLW fee (surcharge). In FY 1993 that amount is — for large generators, and — for small generators.

B. Other Comments.

1. Comment. Many commenters stated that they were shocked and outraged at the size of the fee increases, particularly the 10 CFR Part 170 inspection fees for well logging, radiography and broad scope medical programs. These commenters indicated that the fees are punitive and self defeating and that they cannot afford to pay them. Other commenters stated the increased inspection fees are designed to circumvent the small entity two-tiered annual fee system in 10 CFR Part 171 which allows small entities to either pay an annual fee of \$1,800 or \$400 depending on the gross annual receipts of the licensee. One comments suggested that the NRC should also apply the small entity criteria to 10 CFR Part 170 fees as well while another commenter suggested that all small entities be granted an exemption from fees. Several, commenters stated that the proposed fees favor major service companies with a large capital base and will destroy small companies.

INSERT

On record from the Court of appeals, the Commission also adopts this approach for FYs 1991 and 1992. The large generator amounts are — and —, respectively. The small generator amounts are — and —, respectively. The

mission upon request will refund any overpayments made under the prior LLW fee schedule for FYs 1991 and 1992, which are now withdrawn.



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operation ~~to the~~ will be billed for  
for all cost incurred by the NRC per 170.  
under Part 170.

safety activities for this class of licensees. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates, fiscal years 1993-1994" (NUREG-1100, Volume \_\_), which is available to the public. The basis for the NRC resources are thoroughly addressed by the Congress through hearings and written questions and answers. The FY 1993 NRC hearings are documented, for example, in the publication Energy and Water Development Appropriations for FY 1993 --X Hearings before a Subcommittee on Appropriations, House of Representatives, One Hundred Second Congress, Second Session, Part 6. The resources resulting from this review and decision process are those necessary for NRC to implement its statutory responsibilities. Questions relating to the NRC budget approval process were also addressed in the final rules published on July 10, 1991 (56 FR 31482) and July 23, 1992 (\_\_ FR \_\_). Given the increase in the budget for the fuel cycle class of licensees, it is necessary to increase the fees to recover the cost for these activities in accordance with OBRA-90. L

3. Comment. Another fuel facility licensee indicated that based on the Court's decision to grant Combustion Engineering an exemption from fees for one of its two low enriched uranium plants located in Hemitite, Missouri and Windsor, Connecticut then it too deserves to be considered for an exemption because it is not operationally equivalent to the plants run by the full scope fuel fabricators since it purchases finished fuel pellets from another company and loads them into

remove any uncertainty, the NRC is making minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

5. Comment. One commenter indicated that the methodology used in the current rule to determine inspection fees (routine and non-routine) in 10 CFR Part 170 should remain the same and that by proposing a uniform fee for both routine and non-routine inspections NRC believes they are equivalent. The commenter feels that the burden for inspection fees should be placed on licensees facing non-routine inspections and that by creating a uniform fee for both types of inspections the NRC, in turn, burdens those licensees who do not require non-routine inspections and who are unlikely to in the future. The commenter suggests that NRC create a lower fee schedule for routine inspections and make up the difference with higher fees for non-routine inspections.

Response. NRC indicated in the proposed rule the reason for combining the current routine and nonroutine inspection fees into a single inspection fee. NRC review of the inspection information indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed (58 FR 21670). Therefore, the NRC has little or no meaningful current data<sup>~</sup> on which to base a separate nonroutine inspection fee. As a result, the NRC is combining routine and nonroutine

Response. The issue of basing fees on the amount of material possessed, the frequency of use of the material, and the size of the facilities, market competitive portions, and the assessment of fees to Agreement States were addressed by the NRC in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). The Commission did not adopt that approach, and finds no basis for altering its approach at this time.

*This approach was upheld by the D.C. Circuit in its March 16, 1993 decision in Alfred Sigil*

Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) which must be recovered through fees assessed for the hours expended by the direct FTEs. The budgeted costs have increased \$\_\_\_ million as compared to FY 1992 levels. This increase reflects the amount required by the NRC to effectively accomplish the mission of the agency. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1993-1994" (NUREG-1100, Volume \_\_\_), which is available to the public. Given the increase in the budget, it is necessary to increase the 1993 hourly rate to recover 100 percent of the budget as required by OBRA-90. The NRC is unable to use the CPI or other indices in the development of the NRC hourly rate or the fees to be assessed under 10 CFR Parts 170 and 171 because if the hourly rate were increased by only three to four percent over the FY 1992 levels, the NRC could not meet the statutory mandate requirement of OBRA-90 to recover approximately 100 percent of the NRC budget authority through fees.

10. Comment. The American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) commented that it had submitted a petition for rulemaking to the NRC to review the FY 1991 methodology so that medical licensees could be treated like ~~similar licensees~~ *profit education institutions*. The commenter believes the NRC is obligated to address the concerns raised in the petition in terms of whether the proposed fee schedule for FY 1993 is consistent with the methodology adopted in

part of

Dec/Jan - also note  
that the medical community, as well as the non-medical community, are not being represented in the petition. As the non-profit educational institution, the American Mining Congress, is not a profit educational institution, it cannot be considered for FY 93. Similarly, it cannot be considered for the medical community.

FY 1991.

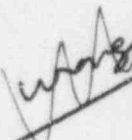
Response. The NRC indicated in its final rule for FY 1992 that it is not obligated to address the concerns raised in the petition of rulemaking filed with the NRC before adopting the final rule establishing fees for FY 1992 (57 FR \_\_\_\_). This continues to be the case for FY 1993 as well. The NRC had intended to handle the petition within the context of the review and evaluation of the fee program for FY 1993. However, on October 24, 1992, the Energy Policy Act was enacted by the Congress. Section 2903(c) of the Act requires the NRC to review its policy for assessment of annual fees under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress if the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. On April 19, 1993 the NRC published a Federal Register Notice soliciting public comment on the need, if any, for changes to the existing fee policy and associated laws in order to comply with the requirements of the Energy Policy Act. The NRC now intends to consider the ACNP/SNM petition as well as a second fee petition received from the American Mining Congress on February 4, 1993, in the context of the study of NRC fee policy as required by the Energy Policy Act. The NRC expects the study to be completed by the end of calendar year 1993.

III. Final Action -- Changes Included in the Final Rule



content.

Fourth, irradiator fee Categories 3F and 3G in 10 CFR Part 170.31 are broadened to include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Fifth, a new section, 170.8 is added ~~to comply with Office of Management and Budget (OMB) regulations that require agencies to give public notice, or a negative declaration, of the presence of information collection requirements contained in Federal regulations.~~ *which provides that Part 170 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.* 

Sixth, the definition of materials license in section 170.3 is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration, or other form of permission issued by the NRC.

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.

Seven amendments have been made to 10 CFR Part 171. First, §§ 171.15, and 171.16 are amended to revise the annual fees for FY 1993 to recover approximately 100 percent of the FY 1993 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Second, § 171.11 is amended to revise paragraphs (a), (b), and (d). Paragraph (a) is revised to revoke the current exemption from annual fees for nonprofit educational



institutions. ~~The NRC is changing its previous policy decision because it believes it has no choice given the U.S. Court of Appeals decision on fees and the lack of a clear administrative record on which to base a continued exemption.~~ A detailed discussion of this change in fee policy is found in Section II of this final rule. Other changes to paragraph (a) incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors. Section 2903(a)(4) of the Energy Policy Act, enacted October 24, 1992, amends Section 6101(c) of OBRA-90 to specifically exempt from 10 CFR Part 171 annual fees certain Federally owned research reactors if--

(1) The reactor is used primarily for educational training and academic research purposes and;

(2) The design of the research reactor satisfies certain technical specifications set forth in the legislation.

The NRC, in implementing this provision of the Energy Policy Act, intends to limit the exemption in 10 CFR Part 171 only to Federally owned research reactors.

Clarifying changes to the exemption provision for materials licensees in §§ 171.11(b) and (d) are also being made.

The NRC is amending §171.11(d) to clarify that the three factors for exemption for materials licensees should not be read as conjunctive requirements but rather should be read as independent considerations which can support an exemption request.

The NRC also notes that since the final FY 1992 rule was published in July 1992, 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 1992 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 but was unable to respond and take action on all of the requests prior to the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the Commission, for FY 1993, is exempting from the FY 1993 annual fees 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, 1992, and were capable of permanently ceasing licensed activities entirely by September 30, 1992. In addition, because nonprofit educational institutions will be billed for the first time for annual fees, they are being afforded the same opportunity to file request for termination and avoid the FY 1993 as other licensees were given when annual fees were first assessed to them in FY 1991. The NRC wishes to emphasize that nonprofit educational institutions who hold licenses, certificates, registrations, and approvals and who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1993, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Nonprofit educational institutions who hold licenses, certificates, registrations and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the NRC for a waiver of the FY 1993 annual fee. All other licensees and approval holders who held a license or approval on October 1, 1992, are subject to the FY 1993 annual fees.

of \$1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The NRC is also continuing for FY 1993 the lower tier small entity annual fee of \$400 per licensed category for certain materials licensees, which was established by the NRC in FY 1992 (57 FR 13625; April 17, 1992).

The 10 CFR Part 171 annual fees have been determined using the same method used to determine the FY 1991 and FY 1992 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 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 charges are consistent with the <sup>on OBLA -</sup> Congressional guidance in the Conference Committee Report, 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. <sup>on whether statute</sup>

The NRC notes that many licensees have indicated during the past two years 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 particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. 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

license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 CFR Parts 30, 32 through 35, 39, 40, 61, 70, 71 and 72. This definition is consistent with the definition of license in Section 551(8) of the Administrative Procedures Act.

Section 171.8 Information collection requirements: OMB approval.

This section is added to comply with Office of Management and Budget (OMB) regulations that require agencies to give the public notice, or a negative declaration, of the presence of information collection requirements contained in Federal regulations. These revisions are of a minor administrative nature and are made to comply with OMB regulations.

Section 171.11 Exemptions.

Paragraph (a) of this section is amended to revoke the current exemption from annual fees for nonprofit educational institutions. The NRC is changing its previous policy decision because <sup>of</sup> ~~it believes it has no choice given~~ the U.S. Court of Appeals <sup>current</sup> ~~decision on fees and the lack of a clear~~ administrative record <sup>that would comprise ~~the basis for~~ <sup>a</sup> continued</sup> ~~on which to base a continued~~ exemption. A detailed discussion of this change in fee policy is found in Section II of this final rule.

AE49-2  
PDR

**From:** Andrew L. Bates (ALB)  
**To:** JFC, KDC, MXK, SMH  
**Date:** Friday, July 2, 1993 7:49 am  
**Subject:** Commissioner Remick & dePlanque Views

Attached are the draft sepearte views of Commissioners Remick & de Planque on the Fee Rule. They are subject to revision after the Commissioners have read the final draft of the rule.

**Files:** m1:COASE3A

June 30, 1993, 5:20 p.m.

[Remick/de Planque Draft for Fed. Reg. notice of final fee rule:]

For the reasons given below, we believe that the exemption for educational institutions, be they reactor licensees or materials licensees, should have been continued for the present on the basis of the approach suggested by the Court, and reconsidered thoroughly in the context of our response to Section 2903(c) of the Energy Policy Act of 1992.

First, we do not believe that the notice of proposed rulemaking was adequate. Although the notice invited comments on the Court's "externalized benefits" approach, and on whether the exemption should be continued, the notice argued vigorously for continuing the exemption and therefore did not convey that the agency was, in effect, depending almost entirely on comments from affected licensees to provide a rationale for the exemption in FY 1993. It will be extremely difficult for many educational institutions to adjust this late in their budget cycles to what in many cases will be unexpected and significant fees.

Second, it is not entirely clear how the agency will apply the majority's two-part test for case-by-case exemptions, or what criteria will be used to determine whether a request satisfies the two-part test.

Third, no matter how the two-part test is interpreted and applied, we believe that a generic exemption based on the Court's suggested approach would be preferable to the two-part test for a number of reasons: (1) The Court's suggested approach takes into consideration externalized benefits to a larger group than just NRC licensees and thus makes it possible for the agency to consider exemptions for education licensees whose externalized benefits flow principally to persons and organizations other than NRC licensees; (2) the Court's suggested basis for the generic exemption would avert a situation in which granting an exemption would cause the U.S. Treasury to lose fee income and in which denial of an exemption could force closure of a facility or termination of licensed activities of wide benefit; and (3) the generic exemption envisioned by the Court would obviate the need for a case-by-case, year-by-year expenditure of resources on a multitude of exemption requests.

In essence, the agency missed an opportunity to consider seriously the classic "externalized benefits" argument suggested by the Court. A general argument like the one the Court invited us to make has a long history, and the "law and economics" scholars on the Court are no doubt familiar with the argument. It is, first, that education, like national defense, the administration of justice, and a few other activities, provides large and indispensable benefits to the whole society, not just to purchasers (in this case students) of the activity, and, second, that the market cannot be expected to supply the necessary amount of education, either because the "buyers" in the education market will not know enough to put the "right" price on education, or because they will not be able to pay that price. Consistent with this argument, education in free-market economies relies to a great



extent on extra-market financial support from philanthropy and government.

This general argument would have to be adapted to the specific circumstances of our licensees to justify a generic exemption. It is clear that the argument requires more than a demonstration of hardship, and more than what the Court called the "quite vague" reference to the "externalized benefits" of education. Also, the Court would have required a showing that those benefits were "exceptionally large" and that they could not be "captured in tuition or other market prices." Nevertheless, the agency, and the commenters if given reasonable notice, might have been able to build an administrative record to support a generic exemption based on the argument. The effort the agency has saved by not looking further into the issue may turn out to be a fraction of the effort the agency will expend on responding to requests for case-by-case exemptions and permission to pay in installments.

We fear the ultimate effects the majority's action may have. To take research and training reactors alone, an annual fee of about \$65,000 may prove to be a very substantial addition to, and possibly an unbearable burden for, the operating budgets of many of these reactors. Similar consequences may befall formerly exempt materials licensees. Consequently, the country may lose the considerable benefits which the nuclear-related activities of educational institutions provide, benefits acknowledged by the agency in the Statement of Considerations accompanying the proposed rule.