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

AE49-2
PDR
007

JUL 08 1993

MEMORANDUM FOR: Ronald M. Scroggins
Deputy Chief Financial Officer/Controller
Office of the Controller

FROM: Patricia G. Norry, Director
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON FINAL RULE ENTITLED "FY 1991 AND 1992 FINAL RULE IMPLEMENTING THE US COURT OF APPEALS DECISION AND REVISION OF FEE SCHEDULES; 100% FEE RECOVERY, FY 1993"

The Office of Administration concurs, subject to the comments provided, on the final rule package that amends regulations assessing fees to recover 100 percent of the NRC budget authority for FY 1993. We have attached a marked copy of the final rule package that presents our comments. These changes should be made before the final rule is submitted for publication in the Federal Register.

When the document is forwarded for publication, please include a 3.5 inch diskette that contains a copy of the document in WordPerfect 5.0 or 5.1 as part of the transmittal package. The diskette will be forwarded to the Office of the Federal Register and the Government Printing Office for their use in typesetting the document.

If you have any questions, please contact Alice Katoski, 492-7928, or Michael Lesar, 492-7758, Division of Freedom of Information and Publications Services.

Patricia G. Norry, Director
Office of Administration

Attachment: As stated

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AE49

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~~ is rule implementing the a decision of the March 16, 1993, that dated U.S. Court of Appeals for the District of Columbia Circuit ~~decision~~ remanded to the NRC portions of the FY 1991 annual fee rule. The remanded portions pertain to: (1) the NRC's decision to exempt from annual fees 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. 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. The NRC, in this final rule, has, retroactive to FY 1991, 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. These approaches are consistent with the court's decision.

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:

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 on entities licensed by the NRC. 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 at 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 at 10 CFR Part 171 under the authority of OBRA-90,

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 version of a rule for FY 1993 establishing 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). Because of the need to collect annual fees for FY 1993 prior to October 1, 1993, the Commission is promulgating this final rule before it completes the user fee review mandated by the Energy Policy Act. Only changes in Commission policy resulting from that review will be incorporated in fee schedules promulgated in future years. 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 more than 500 public comments on the proposed rule. Although the comment period expired on May 24, 1993, the NRC reviewed and evaluated all comments received prior to June 25, 1993. 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. The comments 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 previously had used in part to justify its fee exemption for certain nonprofit educational institutions, on the grounds that to evaluate each licensee's passthrough ability was an impossible

administrative task 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. One stated that to do otherwise would be cumbersome and subjective, and cause fees to vary in response to changing market conditions. 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. 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.

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. 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. 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. 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.

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 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. 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 FR 21662).

Although in the final FY 1991 annual fee rule, the Commission stated that passthrough was a factor 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 primarily 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. Moreover, on further reflection, 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. The Commission agrees with these observations, which defeat the suggestion that the Commission has a statutory obligation to exempt licensees who cannot pass through their fees to customers. After full consideration of the passthrough question, 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. 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 commercial data that some licensees might be ~~loath~~ reluctant to reveal. The Commission could not simply rely on self-serving affidavits or statements by licensees themselves on passthrough problems, without

jeopardizing the integrity of the 100 percent fee recovery system mandated by the Congress. Instead, the Commission would have to independently verify its licensees' submissions.

Even if the Commission could obtain all the necessary information, it does not have the business expertise or the resources to accurately evaluate that 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, like all other enterprises active in the American economy. 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 solicited comments on whether to continue the exemption from fees for nonprofit educational institutions. 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). The Commission requested in particular 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. The Commission also "invite[d] public comments on whether to discontinue the educational exemption" entirely. 58 FR 21664 (1993).

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. Another commenter made the point that fees should not be charged to programs receiving support from the Federal government in other ways. Some commenters urged not only keeping the exemption in place, but expanding it to include museums and other nonprofit institutes. 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. 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 that were not covered by the educational exemption competing for scarce research funds and limited numbers of patients. 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. 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.

Response. The Commission is deeply troubled by the choices before it on this issue. On one hand, the Commission as a general principle believes that the most fair user fee schedule is one where each NRC licensee, including non-profit educational institutions, pays its fair share of NRC costs. Under such an approach, the NRC does not have to make difficult comparative judgments regarding the relative social value of benefits by the different classes of NRC licensees such as educational institutions, the medical community, and generators of electricity. On the other hand, the Commission does not question the value of education. The Commission is reluctant to impose fees that could result in a future diminution in the already dwindling number of university programs devoted to the nuclear sciences.

In the wake of the court's decision, the Commission issued a proposed rule that would continue in place the educational exemption. The Commission now has reluctantly concluded that, in view of the court decision and the administrative record developed during the comment period, it cannot justify a generic "educational" exemption for FY 1993. Nor can it adequately rationalize the generic exemption previously allowed in FY 1991 and FY 1992.

The Court's Allied-Signal decision suggested that the NRC 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 require a showing that nuclear education as a generic matter is much more valuable than what students or the private market are willing to pay for it. Although the Commission had anticipated that 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. Nor does the Commission have in hand sufficient economic data, analyses, or other support for issuing an across-the-board exemption to nonprofit educational institutions. As a result, the Commission lacks an adequate administrative record on which to base a continued generic exemption of all 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. Passthrough ability in any event is an unworkable standard for setting annual fees. Without either the passthrough rationale or a persuasive "externalized benefits" rationale, the Commission has no choice but to charge colleges and universities fees appropriate to their status as licensees.

The Commission cannot conclude on the current record that education generically produces benefits that to a unique degree are undervalued in the market place -- i.e., "exceptionally large externalized benefits". As the comments and court decision indicated, many other licensees can and do claim that they provide important benefits to society that are worthy of fee exemptions. Without a means of differentiating these groups of licensees from one another, any rationale ~~for singling~~ to single 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 all other NRC licensees including nonprofit, tax-exempt entities such as hospitals, museums, and institutes. Furthermore, the NRC also directly charges annual fees to other Federal agencies such as the Department of Veterans Affairs, the National Institutes of Health and the Department of Defense. Charging annual fees to colleges and universities is consistent with the

Commission's preferred approach to fee recovery and Congressional guidance that NRC establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of the charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees.

The Commission was also struck by the 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 at least some assumed beneficiaries of education do not view it quite as positively as the Commission had believed. This in turn strengthened the Commission's view that the benefits of education to society alone are not enough to support a generic exemption.

The Commission, however, is not unsympathetic to the problems this new course of action is likely to cause many formerly exempt nonprofit educational institutions. Because this is a change in policy, the Commission would like to call to the attention of affected licensees the possibility of paying the annual fee on an installment basis under 10 CFR 15.35(b), subject to the agency approval and demonstrated need on the part of the requesting licensee.[1]

---

[1]Requests to pay fees on an installment basis must be submitted in writing to the NRC, Office of the Controller, Division of Accounting and Finance, Washington, D.C. 20555. All requests must furnish satisfactory evidence of inability to pay the debt in one lump sum.

Some commenters expressed particular concern over the fate of research reactors. The Commission also notes that, like all other licensees, affected nonprofit educational licensees can request individual exemptions, under 10 CFR 171.11(b) or (d) for university research reactors or materials licensees respectively. Any research reactor seeking an exemption under the "public interest" standard in § 171.11(b) would be expected to demonstrate severe financial hardship as a result of the newly imposed annual fees as well as a significant externalized benefit provided by that reactor to other NRC licensees. The Commission will be examining the general issue of exempting nonprofit educational institutions as part of its Energy Policy Act-mandated review, and may choose following that review to modify further its policy in this area or to recommend Congressional action. For FY 1993, however, formerly exempt nonprofit educational institutions must pay annual fees based on the preexisting fee categories into which they fall.

On a 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. The Commission will not (and by law cannot) retroactively collect these fees from the educational institutions for FY 1991 and FY 1992. As a result, the Commission upon request will refund to power reactor licensees portions of those fees paid by them in FY 1991 and FY 1992 to cover the annual fees of the exempted nonprofit educational institutions.

Finally, the Commission recognizes that its action in

this rule is limited only to revoking the exemption for nonprofit educational institutions from Part 171 annual fees. The decision leaves intact the nonprofit educational exemption contained in Part 170 (from IOAA fees). The Commission is not revoking that exemption at this time because it did not seek comments on that approach in this rulemaking.

The Commission intends to evaluate that issue, as well as the wisdom of its decision regarding Part 171 fees, as part of its Energy Policy Act review. Obviously, after that review, if the Commission continues to believe it is appropriate to charge nonprofit educational institutions Part 171 annual fees, there is a substantial likelihood that this approach will also be adopted with regard to Part 170 IOAA fees as well.

3. Allocation of Low-Level Waste Costs.

In FY 1991 and FY 1992, the NRC allocated low-level waste (LLW) costs by the amount of waste disposed per class of licensee, dividing the costs equally within each class. This method of cost allocation was challenged by the petitioners in Allied-Signal. In its decision, the court remanded the issue of LLW cost allocation to the Commission. The court stated that the NRC's class-based LLW approach required it to attempt to allocate those costs licensee-by-licensee. An integral part of the court's rationale was that it believed that NRC must have individual licensee data on LLW disposal, and if so there was no reason not to break down this cost allocation from the class level to the individual level.

In response to the court decision, the NRC in its

proposed FY 1993 annual fee rule requested comments on four alternative methods of LLW cost allocation and possible variations of those alternatives. A number of comments were received.

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.

There was no consensus among the commenters regarding a preferred option. Again, the Commission is faced with a difficult policy decision.

Commenters that supported Alternative 1 (uniform fee) argued primarily that the real benefit of LLW disposal is merely the availability of such services and all generators have an equal 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 individualized 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 which would base 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 a careful evaluation of the comments, the Commission concludes that, on balance, a variant of Alternative 1 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; (2) existing data on which to base the fees; and (3) 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 most types of NRC 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. Since there is no LLW disposal site licensee, these costs must be allocated to other NRC licensees in order to recover 100 percent 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 licensing and regulating future LLW disposal sites.[2] 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 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

---

[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).

the agency's generic LLW costs.[3] 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 allocation method.

Alternative 4's "curie" approach had little support from the commenters and the Commission believes it is the least preferable alternative since volume is at least as good of an indicator, indeed probably a better indicator, of the benefits of tne NRC generic low-level waste activities. In addition, cost allocation by volume is more practical to implement.

Alternatives 3 and 4, reallocating LLW disposal costs on an individual rather than class basis, may appear to some to be 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 of by individual licensees. However, currently the NRC does not have data on the amount of waste generated for each of the over 1,000 individual licensees that generate LLW.[4] The Commission also

---

[3]Fees for the review of applications for LLW disposal sites that are submitted to NRC will be recovered under 10 CFR Part 170 from the specific applicant.

[4]The Commission is evaluating whether it would be beneficial to its LLW and other regulatory programs to obtain individual LLW generation data. If the Commission does acquire such data, then the Commission would evaluate whether such data could form the

believes that it is not practical, and probably not even possible, to retroactively determine the amount of waste generated by each individual licensee for FY 1993 and prior years since the time to capture ~~such~~ this 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.[5] 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, and some paying nothing while all licensees that generate LLW will benefit from the NRC generic LLW activities. In addition to being unfair, using individual disposal

---

basis for a revised approach for assessing the LLW surcharge.

[5]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 heath, safety, financial, and legal issues.

data would result in the significant administrative burden of "translating" raw and coded disposal data 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. 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.

Alternative 2's class-based approach 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. The annual fee would be based on the average amount of waste disposed per licensee in a class. Stated another way, the average LLW disposed per class of licensees would be used as a proxy for generation. Alternative 2, however, has drawbacks for those classes with a relatively small number of licensees, such as the fuel facilities. With a small number of licensees in a class, abnormally high or low LLW disposal by one or two licensees may skew the average so that it would no longer be a good proxy for LLW generation for that class.

As several commenters noted, Alternative 1's flat fee

approach 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 significantly different amounts 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 fairness and equity can best be accomplished by creating two groups and charging each a flat fee -- large generators and small generators. This would eliminate the problem caused by using groups with a small number of licensees. This approach will result in all LLW-producing licensees paying a fairly determined fee, and avoid the gross inequities of total fee avoidance or disporportionately large fees for smaller licensees that would have resulted under the other alternatives and their variations put forth for comment in the proposed rule.

The large generators are comprised of power reactors and large fuel facilities waste generators in this group are expected to generate more than 1,000 cubic feet of LLW per year. The small generators consist of all other LLW-producing licensees. The amount of the costs allocated to tne two groups would be based on the historical average of the amount of waste disposed over a two-year period. Within these two groups, each licensee would pay the same LLW fee (surcharge). In FY 1993, that amount is $61,100 for large generators and $1,100 for small generators.

On remand from the Court of Appeals, the Commission also adopts this approach for FY 1991 and FY 1992. The small generator LLW surcharge, $1,400 and $1,600 in FY

1991 and FY 1992, respectively, would be unchanged ~~rule~~ since approximately 20 percent of the cost would continue to be allocated to these licensees. The large generator LLW surcharges for FY 1991 and FY 1992 are $60,800 and $60,200, respectively. These fees are lower than the $143,500 and $155,250 fees paid for FY 1991 and FY 1992 by some large fuel facilities. Thus, refunds are appropriate to these facilities. The NRC upon request will refund any overpayments made under the prior LLW fee schedule for FY 1991 and FY 1992, which are now withdrawn.

B. Other Comments.

1. Comment. Many commenters stated that they were concerned 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 they believe the fees are grossly exorbitant, punitive, and self defeating and that they cannot afford to pay them. A large number of small gauge users commented that because of the fees 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. 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. Several commenters stated that the increase in NRC fees is an inducement for Agreement States to raise their regulatory fees. One commenter

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.

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 for licensing actions and conducting individual inspections of licensed programs under 10 CFR Part 170. The Commission notes that substantial reductions are given under 10 CFR Part 171 to small entities. For example, a well logger with gross receipts of less than $3.5 million would pay under this final regulation an annual fee of $1,800 rather than $11,420. As the Commission has stated previously, the small entity annual fee reduction is to reduce but not eliminate the impact of the fees (57 FR 32720).

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 for a low enriched uranium facility increased from $838,250 in FY 1992 to 1,319,000 in FY 1993. The commenters

in the publication Energy and Water Development Appropriations for FY 1993 -- 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 (57 FR 32696). 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. Contrary to some commenters suggestions, this increase is not attributable to NRC activities related to USEC. With regard to USEC, the NRC has adjusted its budgeted allocation for this new and unique added responsibility to reflect planned FY 1993 USEC activities and the fact that USEC will be assessed fees for these activities. 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.

4 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 Hematite, 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. The Court concluded that "the argument that the "equal fee per license" rule is "unfair and inequitable" is persuasive only on the ground that the rule produced troubling results when applied to Combustion's circumstances." The Court saw no reason for requiring the NRC to attend to that rather rare situation in the rule itself. Thus, consistent with the Court decision and 10 CFR Part 171, if licensees feel that based on the circumstances of their particular situation 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 partial 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 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 in the proposed rule

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 from other persons as defined by Section 11.e.(2) of the Atomic Energy Act. 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), that authorize the receipt, from other persons, of Section 11.e(2) byproduct materials for possession and disposal will be subject to the Category 4D fees.

4 Although 10 CFR Part 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 Part 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.

4 With respect to footnotes 1 and 7 in 10 CFR Part 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 nonroutine) 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 nonroutine inspections and that by creating a uniform fee for both types of inspections the NRC, in turn, burdens those licensees who do not require nonroutine 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 nonroutine 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's review of the inspection

information indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most categories there were no nonroutine inspections 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. Because the inspection fee is based primarily on hours expended to conduct routine inspections, this approach should not burden those licensees that do not require nonroutine inspections.

6. 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 HLW-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 is 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 appropriations from the NWF.

7. 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.

4 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 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 $26.4 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 Year 1993" (NUREG-1100, Volume 8), 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.

8. 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 that the requirement that NRC recover 100 percent of its budget is wrong. It allows budgets to grow more irresponsibility than they usually do because no legislator or executive office needs to face a consequent tax problem. Another commenter suggested that it is imperative for NRC to closely examine what its regulatory program provides and how it can be provided more effectively.

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 positions, 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 continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, NRC 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 Allied Signal.

With respect to the amount of the budget, the requirement for NRC to recover 100 percent of its budget does not exempt the NRC from the normal Government review and decisionmaking process. The NRC must first submit its budget to the Office of Management and Budget. The NRC budget is then sent to Congress for review and approval. The budget process, along with the internal NRC review process, helps ensure that the NRC budget is the minimum necessary to carry out an effective regulatory program.

9. 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 nonprofit educational 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 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 32694). 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 overall fee policy review as required by the Energy Policy Act. The NRC believes that this will help ensure that similar issues are treated consistently and that

resolution of the petitions prior to the fee policy review would be premature given the Congressional request for future evaluation of the fee policy. The NRC expects the study to be completed by the end of calendar year 1993.

The Commission also notes that some of the medical commenters have asked that they be exempted from fees, just like the Commission has previously done for nonprofit educational institutions. As the Commission has explained earlier, the record before the Commission cannot support the continuation of the nonprofit educational exemption for FY 1993. Similarly, the Commission cannot adopt such an exemption for the medical community.

Statements by Remick and DePlanque

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

(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 fees will become effective 30 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the FY 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.

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 which provides that 10 CFR Part 171 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

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

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 CFR Parts 30, 32 through 36, 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, which is being added, provides that 10 CFR Part 170 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

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

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)

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

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

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

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 has been added to 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 Part 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

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 36, 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, which is being added, provides that 10 CFR Part 171 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

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 of the U.S. Court of Appeals decision on fees and the current administrative record that would comprise the basis for 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

(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 annual fees for nonprofit educational institutions. Nonprofit educational institutions will be subject to annual fees in FY 1993.

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. Any requests for exemption from the annual fees should be addressed to the USNRC, ATTN:

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 expired 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)

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 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. With respect to Commanche Peak 2, the reactor received an operating license in FY 1993. In accordance with 10 CFR Part 171.17, Comanche Peak 2 will be billed for a prorated share of the annual fee. The total amount of $2.2 million to be paid by Big Rock Point and Comanche Peak 2 in base annual fees has been subtracted from the total amount assessed operating reactors as a surcharge.

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:

Category of Costs	FY 1993 Budgeted Costs ($ In Millions)
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. Low-level waste disposal generic activities;	6.7
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	1.8
b. Costs not recovered from Part 171 for small entities.	4.6
Subtotal Budgeted Costs	$26.7
Less amount to be assessed for partial and prorated fees under Parts 171	$2.2
Total Budgeted Costs	$24.5

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$24.5 \text{ million}}{109.7^{6}} = \$223{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor,

---

[6]Commanche Peak 2 which was licensed 240 days out of 365 days (0.7 year) in FY 1993 has been included in the calculation. Commanche Peak 2 will be assessed this surcharge.

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 Part 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. 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) that authorize 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. The Commission has modified its approach so as to access the budgeted LLW costs to two broad categories of licensees (larger LLW generators and small LLW generators) based on historical disposal data. This surcharge, however, continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. For FY 1993, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $9.2 million relating to LLW disposal generic activities from small generators which are comprised of materials licensees that dispose of LLW. The percentage distribution for FY 1993 has been refined compared to FY 1991 and FY 1992 to delete LLW disposed by Agreement State licensees from the base. The FY 1993 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

	Category of Costs	FY 1993 Budgeted Costs ($ In Millions)
1.	Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities.	$9.2[1/]

[1/] $6.7 million of total is allocated to power reactors.

(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 that 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

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, Nuclear Power Plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC 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.

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[1/ 2/]

*****

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.

[5/] 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.

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 36, 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--

(1) 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

(2) 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 extra-ordinary 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.

*****

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.

_____
James M. Taylor,
Executive Director for Operations.