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

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JUL 16 1993

Health Care Financing Administration
ATTN: William Toby
Acting Administrator
200 Independence Avenue, SW
314G-HHH
Washington, D.C. 20201

Gentlemen:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees to licensees. In order to comply with the law, the Commission amended its fee regulations in 10 CFR Parts 170 and 171, in FYs 1991 and 1992, in order to recover the NRC's budget authority. We are enclosing for your information and use the following documents which relate to the fees to be assessed in FY 1993:

1. Final Notice of Rulemaking which is being transmitted to the Federal Register for publication. The final rule establishes the license, inspection and annual fees to be assessed for FY 1993.

Please note that the license and annual fees are applicable to NRC licensees including those licensees in the medical community. If you have any questions concerning these changes to the NRC fee regulations, please call Jim Holloway on 301-492-4301.

Sincerely,

Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Enclosure:
As stated

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Subpart A also issued under 5 U.S.C. 552 and 31 U.S.C. 9701; Pub. L. 99-570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.35, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), 2120 L Street, NW. (Lower Level), Washington, DC, by the duplicating service contractor are as follows:

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Dated at Rockville, Maryland this 14th day of July, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-17181 Filed 7-19-93; 8:45 am]

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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, this rule implements a decision of the U.S. Court of Appeals for the District of Columbia Circuit dated March 16, 1993, that 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 cost 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. In this final rule, the NRC 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. August 19, 1993.

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

SUPPLEMENTARY INFORMATION:

I. Background

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 to NRC applicants and licensees. 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, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published three final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the part 170 professional hourly rate and the materials licensing and inspection fees, as well as the part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and method for determining the 10 CFR part 170 hourly rate and fees, and the 10 CFR part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties; the U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993. The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993. The court case and the NRC's response to the issues remanded by the court are discussed in Section II of this final rule.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license

fees that were previously billed every six months.

The limited change to 10 CFR part 171 adjusted the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower-tier small entity fee of $400 per licensed category was established for small businesses and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), the NRC published a final rule in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992. The basic methodology used in the FY 1992 final rule was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472).

Section 2903(c) of the Energy Policy Act (enacted in October 1992) requires the NRC to undertake a broad review of its annual fee policies under section 6101(c) of OBRA–90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC published for public comment a separate notice in the **Federal Register** on April 19, 1993 (58 FR 21116). The 90-day public comment period for this notice expires on July 19, 1993.

On April 23, 1993 (58 FR 21662), the NRC published the proposed rule 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. 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, DC, 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, DC.

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 remand issues of the U.S. Court of Appeals for the District of Columbia Circuit [illegible] 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 Pass Through 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 passthrough the costs of those fees to its customers. The NRC had proposed abandoning consideration of passthrough capability, a factor 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 extremely difficult administrative task that 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 created a passthrough 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 passthrough 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 passthrough 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. On further reflection, the Commission now acknowledges that these institutions are not structurally incapable of compensating for increased costs, such as 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 by law 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 [] 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 it cannot set fees using passthrough considerations with reasonable accuracy and at reasonable cost even for classes of licensees with few members. If the Commission were to attempt such an endeavor, it would require a comprehensive, on-going audit of each 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 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 verify its licensees' submissions independently.

Even if the Commission could obtain all the necessary information, it does not have the business expertise or the resources to evaluate accurately that information in order to make a passthrough determination. 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). Responding to the court's suggestion that educational licensees might be differentiated from profit-oriented or other licensees, the Commission requested in particular comments on whether nuclear education might "yield exceptionally large externalized benefits"—i.e., exceptional 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 hard-pressed 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 question whether educational activities yielded "exceptionally large externalized benefits", the distinction emphasized by the court as a possible alternative justification for special generic treatment of educational institutions.

Other commenters instead argued that the generic educational 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 finds the choice before it on this issue a difficult one. As a general principle, the Commission favored a fee schedule under which each NRC licensee, including nonprofit educational institutions, pays its fair share of NRC costs in accordance with the mandate of Congress. Under such an approach, the NRC does not have to make difficult normative judgments regarding the relative social value of the benefits provided by the activities of NRC's licensees or equally difficult economic judgments regarding the impact of annual fees on the availability of those benefits. Nevertheless, the Commission recognizes that imposing fees on beneficial activities creates some risk, often very difficult to ascertain quantitatively, of cutting back on benefits. The Commission is reluctant, in particular, to impose fees that could result in diminishing the already dwindling number of university programs devoted to the nuclear sciences. But the Commission is not in a position to analyze with any

confidence the potential burden on educational benefits in comparison with the burdens that fees will impose on the beneficial activities of other licensees.

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.

Although the Commission had anticipated that colleges and universities benefiting from the exemption would take up the Commission's invitation to discuss and elaborate upon the "exceptionally large 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 "exceptionally large externalized benefits" rationale, the Commission has no choice but to charge colleges and universities fees appropriate to their status as licensees, just as it charges other classes of licensees who can and do claim that they provide important benefits to society that are worthy of generic fee exemptions.

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 so positively as the Commission had believed. This ... turn strengthened the Commission's view that the mere observation that education benefits society is not alone 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 agency approval and demonstrated need on the part of the requesting licensee.[1]

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 mate...' licenses. Some commenters expressed particular concern over the fate of research reactors. Any licensee seeking an individual exemption under the "public interest" standard in § 171.11(b) would be expected, as part of its showing that exceptional treatment is justified, to demonstrate severe financial hardship resulting from the newly imposed annual fees as well as significant "externalized benefits". This could include benefits to other NRC licensees.

[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, DC 20555. All requests must furnish satisfactory evidence of inability to pay the debt in one lump sum.

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 a portion of the surcharge paid by those reactor licensees 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 nonprofit educational institutions for FY 1991 and FY 1992. In the near future, the NRC will separately publish final revised FY 1991 and FY 1992 schedules for reactor surcharges resulting from the revocation of this exemption. Requests for refunds should not be filed with the NRC prior to publication of these schedules.

Finally, the Commission recognizes that its action in this rule is limited only to revoking the exemption for nonprofit educational institutions from 10 CFR part 171 annual fees. The decision leaves intact the nonprofit educational exemption contained in 10 CFR 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 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 ../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 easier 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 of 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 practical, 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 the Low-Level Radioactive Waste Policy Amendments Act of 1985, and the Atomic Energy Act, which require the NRC to perform certain generic activities. These activities include developing rules, policies and guidance, performing research, and providing advice to and consultation of LLW compacts and Agreement States who will license some of the future LLW disposal sites. The budgeted costs for most of NRC generic activities are generally recovered in annual fees from the class of licensees for whom the activities are used to directly regulate. (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 OBRA–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

[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).

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 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 the 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 believes that it is not practical, and probably not even possible, to determine retroactively the amount of waste generated by each individual licensee for FY 1993 and prior years since the time to capture this data has passed for many licensees.

The Commission has concluded that using available individual waste *disposal* data (Alternative 3) would result in grossly unfair annual fees since some licensees that generate LLW would not pay any fees. This would occur because licensees that generate LLW can dispose of or temporarily store the LLW. Those licensees who temporarily store their waste would not pay an annual fee if individual disposal data are used. Some licensees store their LLW because they 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 future generic LLW activities. In addition to being unfair, using individual disposal data would result in the significant administrative burden of "translating" raw and coded disposal data 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 abnormally low volumes of LLW disposed of 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—large generators and small generators and charging each a flat fee. This variant of Alternative 1 would eliminate the problem caused by using groups with a small number of licensees. This variant of Alternative 1 will also result in all LLW-producing licensees paying a fairly determined fee, and avoid the gross inequities of total fee avoidance or disproportionately 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 each 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 the two groups is estimated based on the historical average amount of waste disposed by the two groups. This reflects an 82 percent/18 percent split between the large and small groups. Within these two groups, each licensee would pay the same LLW fee (surcharge). In FY 1993, that amount is $61,100 for large

[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 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 health, safety, financial, and legal issues.

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. This will result in refunds for some large and small LLW generators. In the near future, the NRC will separately publish final revised FY 1991 and FY 1992 fee schedules for low-level waste surcharges resulting from changing the method of allocating NRC LLW budgeted generic costs. Requests for refunds should not be filed with the NRC prior to publication of these schedules.

B. Other Comments

1. *Comment.* Many commenters stated that they were concerned about 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 licensees 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 years, the NRC's inspection program has changed significantly. In some program areas, for example, the NRC has emphasized that 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 fee reductions are given each year 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 questioned whether or not the increases were due to the increased staff required to provide oversight of the newly formed United States Enrichment Corporation (USEC). One commenter stated that although the United States Enrichment Corporation (USEC) is neither a licensee nor license applicant, significant resources will be expended to certify the gaseous diffusion plants and it appears that no income has been attributed to the effort associated with this on-going certification process for FY 1993.

Response. The NRC believes that it has provided sufficient information concerning the FY 1993 budget to allow effective evaluation and constructive comment concerning the budgeted costs for fuel facility licensees. In Part III, the Section-by-Section Analysis, Table VI of the proposed rule published April 23, 1993 (58 FR 21675), the NRC provided a detailed explanation of the FY 1993 budgeted costs for the fuel facility class of licensees. Table VI of this final rule also shows a listing of the budgeted costs for this class of licensees. The FY 1993 resources are determined by the NRC staff and approved by the Congress as those necessary to carry out the health and safety activities for this class of licensees. The specific details regarding the budget for FY 1993 are documented in the NRC's publication "Budget Estimates Fiscal Year 1993" (NUREG–1100, Volume 8), which is available to the public. The bases for the NRC resources are thoroughly addressed by the Congress through hearings and written questions and answers. The FY 1993 NRC hearings are documented, for example, in the publication "Energy and Water Development Appropriations for FY 1993—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 32695). Given the increase in the budget for the fuel facilities 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. On June 25, 1993, the NRC informed USEC that the NRC will bill USEC under 10 CFR part 170 for all NRC costs incurred on or after July 1, 1993, the formation date of USEC. The fees will be assessed to USEC under fee Category 1.E. of 10 CFR Part 170.31 and will cover those activities associated with

the certification of the existing gaseous diffusion uranium enrichment facilities.

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, 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 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 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 bills.

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 licensing 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, 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 including mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities because they are not assessed annual fees under fee Category 14.

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

With respect to footnotes 1 and 7 in 10 CFR 171.16, the NRC indicated in the proposed rule that during the past two years many licensees have stated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue was raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material (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 nonroutine 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 does 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 funds 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 by, for example, combining Regional offices, reducing the research program, and reducing the inspection hours by use of Systematic Assessment of Licensee Performance (SALP). This would lower both the hourly rate and the base rate being charged, enabling the industry to reduce its nuclear program costs. Some commenters suggested that the increase in the hourly rate be limited to the increase in the rate of inflation or the Consumer Price Index (CPI) while others indicated that the NRC institute an immediate moratorium freezing fees at or below FY 1992 levels.

Response. The NRC professional hourly rate is established to recover approximately 100 percent of the Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $132 for FY 1993 are discussed in detail in part IV, Section-by-Section Analysis, for § 170.20 of the proposed rule (58 FR 21668) and the same section of this final rule. 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 irresponsibly 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, the size of the facilities, and market competitive positions, 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, equitable, and practical 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 Agreement States, since neither the Agreement States themselves nor the firms issued licenses by the Agreement States are

NRC licensees, they cannot be assessed annual fees under OBRA-90.

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 review 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.

Differing Views of Commissioners 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 at least three reasons: (1) The Court's suggested approach would cover not only research reactors but also the many important materials licenses held by educational institutions; in contrast, it is not clear to what extent the two-part test can be applied to materials licensees. (2) a generic exemption would avert a situation in which every decision on an exemption request either would cause the U.S. Treasury to lose fee income or could force closure of a facility or termination of licensed activities of wide benefit; and (3) the generic exemption envisioned by the Court would obviate the need for a case-by-case, year-by-year expenditure of resources on a multitude of exemption requests.

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

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

We fear the ultimate effects the majority's action may have. To take research and training reactors alone, an annual fee of $62,100 may prove to be a very substantial addition to, and possibly an unbearable burden for, the operating budgets of many of these reactors. Similar consequences may befall formerly exempt materials licensees. Consequently, the country may lose the considerable benefits which the nuclear-related activities of educational institutions provide, benefits acknowledged by the agency in the Statement of Considerations accompanying the proposed rule.

III. Final Action—Changes Included in the Final Rule

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

For FY 1993, the NRC's budget authority is $540.0 million, of which

approximately $21.1 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $518.9 million in FY 1993 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. The NRC estimates that approximately $110.1 million will be recovered in FY 1993 from the fees assessed under 10 CFR part 170. The remaining $408.8 million will be recovered through the FY 1993 10 CFR part 171 annual fees.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691), with the following exceptions. The method for calculating the LLW surcharge has been modified and the Commission has changed its policy with respect to the assessment of annual fees for nonprofit educational institutions. Both changes were discussed in Section II of this final rule.

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

(1) NRC's new budget authority has increased resulting in a corresponding increase in the professional hourly rate and, in some cases, the amount of funds budgeted for a particular class of licensee;

(2) The number of licenses in some classes has decreased as compared to FY 1992 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; and

(3) The biennial review of fees and other charges required by the Chief Financial Officers Act.

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 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 [illegible] recovered through the appropriation from the NWF.

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

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

In the materials inspection area, the historical data for the average number of professional staff hours necessary to complete routine and nonroutine inspections shows that inspection hours used to determine the amount of the inspection fees have increased and in many cases significantly, when compared to the hours currently used under 10 CFR part 170. The data for the average number of professional staff hours necessary to conduct routine and nonroutine inspections were last updated in FY 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional staff hours used in the current fee schedule for inspections is outdated. Since 1985, the amount of the inspection fees has been updated based only on the increased professional hourly rate. The increased average professional staff hours reflects the changes in the inspection program that have been made for safety reasons. In some program areas, for example, NRC management guidance in recent years has emphasized that inspections be more thorough, in-depth and of higher quality. The inspection fees are based on the new average professional staff hours necessary to conduct the inspections multiplied by the professional hourly rate for FY 1993 of $132 per hour.

In summary, the NRC is revising both materials licensing and inspection fees assessed under 10 CFR part 170 in order to comply both with guidance in the Conference Committee report on OBRA–90 and with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service.

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

Third, a new fee category 4D is added to 10 CFR 170.31 to specifically segregate and identify licenses authorizing the receipt from other persons of byproduct material as defined in section 11.e.(2) of the Atomic Energy Act for possession and disposal. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

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

Fifth, a new section, 170.8, is added which provides that 10 CFR part 170 does not contain any information collection requirements falling within the purview of the Paperwork Reduction Act.

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

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

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

Second, § 171.11 is amended to revise paragraphs (a), (b), and (d). Paragraph (a) is revised to revoke the current exemption from annual fees for nonprofit educational institutions. A detailed discussion of this change in fee policy is found in Section II of this final rule. Other changes to paragraph (a) incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors. Section 2903(a)(4) of the Energy Policy Act, enacted October 24, 1992, amends Section 6101(c) of OBRA–90 to specifically exempt from 10 CFR part 171 annual fees certain Federally owned research reactors if—

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

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

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

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

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

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

The NRC also notes that since the final FY 1992 rule was published in July 1992, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1992 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but was unable to respond and take action on all of the requests prior to the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the Commission, for FY 1993, is exempting from the FY 1993 annual fees those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage license prior to October 1, 1992, and were capable of permanently ceasing licensed activities entirely by September 30, 1992.

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

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

Fourth, a new category 4D is added to 10 CFR 171.16(d) 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 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 § 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 § 171.3 is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC.

The NRC notes that the impact of the fees for FY 1993 on small entities has been evaluated in the Regulatory Flexibility Analysis (see appendix A to this final rule). Based on this analysis, the NRC is continuing for FY 1993 a maximum annual fee of $1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The NRC is also continuing for FY 1993 the lower tier small entity annual fee of $400 per licensed category for certain materials licensees, which was established by the NRC in FY 1992 (57 FR 13625; April 17, 1992).

The 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991 and FY 1992 annual fees except for LLW annual fees as discussed in Section II of this final rule. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The amendments to 10 CFR part 171 do not

change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The charges are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692–93.

The NRC notes that many licensees have indicated during the past two years that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC is issuing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

C. FY 1993 Budgeted Costs

The FY 1993 budgeted costs by major activity to be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1993 BUDGET AUTHORITY

Recovery method	Estimated amount (dollars in millions)
Nuclear waste fund	$21.1
Part 170 (license and inspection fees)	110.1
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	323.5
Nonpower Reactors	2.7
Fuel Facilities	13.7
Spent Fuel Storage	7
Uranium Recovery	.5
Transportation	4.4
Material Users	[1]38.6
Subtotal part 171	384.1
Costs remaining to be recovered not identified above	24.6
Total	540.0

[1] Includes $5.4 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The $24.6 million identified for those activities which are not identified as either 10 CFR parts 170 or 171 or the NWF in Table I are distributed among the NRC classes of licensees as follows:

$22.1 million to operating power reactors;
$0.8 million to fuel facilities; and
$1.7 million to other materials licensees.

In addition, approximately $5.4 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1993 budget authority in accordance with OBRA–90, the NRC will recover $4.6 million of the $5.4 million from operating power reactors and the remaining $0.8 million from large entities that are not reactor licensees.

This distribution results in an additional charge (surcharge) of approximately $223,000 per operating power reactor; $61,100 for each HEU, LEU, UF_6 and each other fuel facility license; $1,100 for each materials license in a category that generates a significant amount of low level waste; and $120 for other materials licenses. When added to the base annual fee of approximately $3.0 million per reactor, this will result in an annual fee of approximately $3.2 million per operating power reactor. The total fuel facility annual fee will be between approximately $680,000 and $3.1 million. The total annual fee for materials licenses will vary depending on the fee category(ies) assigned to the license.

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

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

IV. Section-by-Section Analysis

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

Part 170

Section 170.3 Definitions.

The definition of materials license is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 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 that are based on full cost is $132 per hour, or $229,912 per direct FTE. The rate is based on the FY 1993 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991 and FY 1992. The method is as follows:

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

TABLE II.—ALLOCATION OF DIRECT FTEs BY MAJOR PROGRAM

Major program	Number of direct FTEs[1]
Reactor Safety & Safeguards Regulation	1,080.0
Reactor Safety Research	117.7
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	334.4
Reactor Special and Independent Reviews, Investigations, and Enforcement	69.0
Nuclear Material Management and Support	18.0
Total direct FTE	[2]1,619.1

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

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

2. NRC FY 1993 budgeted costs are allocated, in Table III, to the following four major categories:

(a) Salaries and benefits.

(b) Administrative support.

(c) Travel.

(d) Program support.

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

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691) and excluding direct Program Support funds, the remaining $372.3 million allocated uniformly to the direct FTEs (1,619.1) results in a rate of $229,912 per FTE for FY 1993. The Direct FTE Hourly Rate is $132 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $372.3 million by the number of direct FTEs (1,619.1 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

TABLE III.—FY 1993 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

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 budgeted costs and to more completely recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1993 rate shown in § 170.20. The NRC is revising the amount of the import and export licensing fees in § 170.21, facility Category K to provide for the increase in the hourly rate from $123 per hour to $132 per hour.

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

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, including Inspections, and Import and Export Licenses.

The licensing and inspection fees in this section are revised to recover more completely the FY 1993 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, have been adjusted to reflect both the increase in the professional hourly rate from $123 per hour in FY 1992 to $132 per hour in FY 1993 and the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and to conduct inspections.

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

To determine the licensing and inspection flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action or inspection for each license category. These average hours are multiplied by the professional hourly rate of $132 per hour for FY 1993. Because the professional hourly rate is updated annually, the biennial review examined only the average number of hours per licensing action and inspection. The review indicates that the NRC needs to modify the average number of hours on which the current licensing and inspection flat fees are based in order to recover the cost of providing the licensing and inspection services. The average number of hours required for licensing actions was last reviewed and modified in 1990 (55 FR 21173; May 23, 1990). Thus the revised hours used to determine the fees for FY 1993 reflect

the changes in the licensing program that have occurred since that time, for example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety. The average number of hours for materials licensing actions (new licenses, renewals and amendments) have not changed significantly for most categories. For new license applications, approximately 60 percent of the materials license population have increases of less than 25 percent, with some having slight decreases. For license renewals, approximately 85 percent have increases of less than 25 percent, with some having decreases; and for amendments, approximately 90 percent have increases of less than 25 percent with some having decreases. Only 2 percent of the materials license population have increases of 100 percent or greater, for example, renewal fees for irradiator licenses (fee Categories 3F and 3G) and licenses authorizing distribution of items containing byproduct material to persons generally licensed under 10 CFR part 31 (fee Category 3J).

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

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

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

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

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $132, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Additional language has been added to irradiator fee Categories 3F and 3G in 10 CFR 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 3L. 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 inspections of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where the source is exposed during irradiation.

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

Part 171

Section 171.3 Definitions.

The definition of materials license is being revised to clarify that the term license, for fee purposes, includes a license, certificate, approval, registration or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 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 certain nonpower (research) reactors, and paragraphs (b) and (d), the exemption section for materials licensees, have been revised.

Section 2903(a)(4) of the Energy Policy Act amends section 6101(c) of OBRA–90 to specifically exempt from 10 CFR part 171 annual fees certain Federally owned research reactors if—

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

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

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

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

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

(B) A liquid fuel loading; or

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

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

The NRC, in making this required change, is not changing its exemption policy. As in FY 1991 and FY 1992, the NRC will continue a very high eligibility threshold for granting exemption requests. 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: Executive Director for Operations, Washington, DC 20555.

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

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

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

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

Section 171.15 Annual Fee: Reactor operating licenses.

The annual fees in this section are revised to reflect the FY 1993 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1993. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1993 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1993 BUDGET TO POWER REACTORS BASE FEES[1]

	Program element total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Safety and Safeguards Regulation (RSSR):				
Standard Reactor Designs	$6,663	111.2	$6,363	103.5
Reactor License Renewal	913	14.6	913	14.6
Reactor and Site Licensing	1,015	24.4	995	24.1
Resident Inspections	.....	204.0	.....	204.0
Region-Based Inspections	4,628	245.6	4,628	240.3
Interns (HQ and Regions)	.....	45.0	.....	45.0
Special Inspections	3,157	60.7	3,157	60.7
License Maintenance and Safety Evaluations	8,606	222.3	8,606	222.3
Plant Performance	860	55.1	860	55.1
Human Performance	6,920	61.0	6,470	56.4
Other Safety Reviews and Assistance	988	36.1	658	29.7
RSSR Program Total	.....	.....	32,650	1,055.7
Reactor Safety Research (RSR):				
Standard Reactor Designs	20,200	29.6	20,200	29.6
Reactor Aging & License Renewal	22,993	13.4	21,493	13.3
Plant Performance	2,800	3.0	2,800	3.0
Human Reliability	6,150	7.2	6,150	7.2
Reactor Accident Analysis	22,102	26.0	22,102	26.0
Safety Issue Resolution and Regulatory Improvements	11,590	38.5	11,590	38.5
RSR Program Total	.....	.....	84,335	117.6
Nuclear Material & Low Level (NMLL) NMLL (NMSS):				
Safeguards Licensing and Inspection	440	19.4	.....	.1
Threat & Event Assess./International Safeguards	1,600	12.7	1,275	6.1
Develop & Implement Inspection Activities	0	2.3	0	1.3
Uranium Recovery Licensing and Inspection	350	9.7	38	.2
Decommissioning NMLL (RES)	1,200	30.1	200	5.6
Environmental Policy and Decommissioning	1,925	9.0	825	3.8
NMLL Program Total	.....	.....	2,338	17.1
Reactor Special and Independent Reviews, Investigations, and Enforcement:				
Diagnostic Evaluations	350	7.0	350	7.0
Incident Investigations	25	1.0	25	1.0
NRC Incident Response	2,005	24.0	2,005	24.0
Operational Experience Evaluation	5,360	34.0	5,360	34.0
Committee on Review Generic Requirements	.....	2.0	.....	2.0
RSIRIE Program Total	.....	.....	7,740	68.0
Total	.....	.....	127,063	1,256.4
Total Base Fee Amount Allocated to Power Reactors (millions)	.....	.....	.....	[2]416.4
Less Estimated Part 170 Power Reactor Fees (millions)	.....	.....	.....	92.8
Part 171 Base Fees for Operating Power Reactors (millions)	.....	.....	.....	323.6

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

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1993 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment.	$2,972,000
2. Beaver Valley 2	....do	2,972,000
3. Braidwood 1	....do	2,972,000
4. Braidwood 2	....do	2,972,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
5. Byron 1	do	2,972,000
6. Bryon 2	do	2,972,000
7. Callaway 1	do	2,972,000
8. Comanche Peak 1	do	2,972,000
9. Diablo Canyon 1	do	2,969,000
10. Diablo Canyon 2	do	2,969,000
11. Farley 1	do	2,972,000
12. Farley 2	do	2,972,000
13. Ginna	do	2,972,000
14. Haddam Neck	do	2,972,000
15. Harris 1	do	2,972,000
16. Indian Point 2	do	2,972,000
17. Indian Point 3	do	2,972,000
18. Kewaunee	do	2,972,000
19. Millstone 3	do	2,972,000
20. North Anna 1	do	2,972,000
21. North Anna 2	do	2,972,000
22. Point Beach 1	do	2,972,000
23. Point Beach 2	do	2,972,000
24. Prairie Island 1	do	2,972,000
25. Prairie Island 2	do	2,972,000
26. Robinson 2	do	2,972,000
27. Salem 1	do	2,972,000
28. Salem 2	do	2,972,000
29. San Onofre 1	do	2,969,000
30. Seabrook 1	do	2,972,000
31. South Texas 1	do	2,972,000
32. South Texas 2	do	2,972,000
33. Summer 1	do	2,972,000
34. Surry 1	do	2,972,000
35. Surry 2	do	2,972,000
36. Trojan	do	2,969,000
37. Turkey Point 3	do	2,972,000
38. Turkey Point 4	do	2,972,000
39. Vogtle 1	do	2,972,000
40. Vogtle 2	do	2,972,000
41. Wolf Creek 1	do	2,972,000
42. Zion 1	do	2,972,000
43. Zion 2	do	2,972,000
44 Catawba 1	PWR—Ice Condenser.	2,964,000
45. Catawba 2	do	2,964,000
46. Cook 1	do	2,964,000
47. Cook 2	do	2,964,000
48. McGuire 1	do	2,964,000
49. McGuire 2	do	2,964,000
50. Sequoyah 1	do	2,964,000
51. Sequoyah 2	do	2,964,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment.	3,013,000
2. Calvert Cliffs 1	do	3,013,000
3. Calvert Cliffs 2	do	3,013,000
4. Ft. Calhoun 1	do	3,013,000
5. Maine Yankee	do	3,013,000
6. Millstone 2	do	3,013,000
7. Palisades	do	3,013,000
8. Palo Verde 1	do	3,009,000
9. Palo Verde 2	do	3,009,000
10. Palo Verde 3	do	3,009,000
11. San Onofre 2	do	3,009,000
12. San Onofre 3	do	3,009,000
13. St. Lucie 1	do	3,013,000
14. St. Lucie 2	do	3,013,000
15. Waterford 3	do	3,013,000
Babcock & Wilcox:		
1. Arkansas 1	do	2,964,000
2. Crystal River 3	do	2,964,000
3. Davis Besse 1	do	2,964,000
4. Oconee 1	do	2,964,000
5. Oconee 2	do	2,964,000
6. Oconee 3	do	2,964,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
7. Three Mile Island 1	do	2,964,000
General Electric		
1. Browns Ferry 1	Mark I	2,939,000
2. Browns Ferry 2	do	2,939,000
3. Browns Ferry 3	do	2,939,000
4. Brunswick 1	do	2,939,000
5. Brunswick 2	do	2,939,000
6. Clinton 1	Mark III	3,031,000
7. Cooper	Mark I	2,939,000
8. Dresden 2	do	2,939,000
9. Dresden 3	do	2,939,000
10. Duane Arnold	do	2,939,000
11. Fermi 2	do	2,939,000
12. Fitzpatrick	do	2,939,000
13. Grand Gulf 1	Mark III	3,031,000
14. Hatch 1	Mark I	2,939,000
15. Hatch 2	do	2,939,000
16. Hope Creek 1	do	2,939,000
17. LaSalle 1	Mark II	2,939,000
18. LaSalle 2	do	2,939,000
19. Limerick 1	do	2,939,000
20. Limerick 2	do	2,939,000
21. Millstone 1	Mark I	2,939,000
22. Monticello	do	2,939,000
23. Nine Mile Point 1	do	2,939,000
24. Nine Mile Point 2	Mark II	2,939,000
25. Oyster Creek	Mark I	2,939,000
26. Peach Bottom 2	do	2,939,000
27. Peach Bottom 3	do	2,939,000
28. Perry 1	Mark III	3,031,000
29. Pilgrim	Mark I	2,939,000
30. Quad Cities 1	do	2,939,000
31. Quad Cities 2	do	2,939,000
32. River Bend 1	Mark III	3,031,000
33. Susquehanna 1	Mark II	2,939,000
34. Susquehanna 2	do	2,939,000
35. Vermont Yankee	Mark I	2,939,000
36. Washington Nuclear 2	Mark II	2,935,000
Other Reactors:		
1. Big Rock Point	GE Dry Containment.	2,939,000
2. Comanche Peak 2	Westinghouse PWR Dry Containment.	2,972,000
3. Three Mile Island 2	B&W PWR-Dry Containment.	2,964,000

The "Other Reactors" listed in Table V have not been included in the fee base. Historically both Big Rock Point and Three Mile Island 2 have been granted either full or partial exemptions from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1993 annual fees based on a request filed with the NRC in accordance with § 171.11. The 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 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 (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

Category of costs	FY 1993 budgeted costs (millions)
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:

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

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,972,000 and an additional charge of $223,000 for a total annual fee of $3,195,000 for FY 1993.

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

Paragraph (e) is revised to show the amount of the FY 1993 annual fee for non-power (test and research) reactors. This includes nonpower reactor licenses issued to nonprofit educational institutions. In FY 1993, $2,669,000 in costs are attributable to those commercial, nonprofit educational, and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $62,100 per operating license. The Energy Policy Act provided for an exemption for certain Federally owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. The NRC has granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center, Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado and the Armed Forces Radiobiological Research Institute, Bethesda, Maryland for its research reactor.

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

Paragraph (d) is revised to reflect the FY 1993 budgeted costs for materials licensees, including Government agencies licensed by the NRC. These fees are necessary to recover the FY 1993 generic costs totalling $57.9 million applicable to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

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

TABLE VI.—ALLOCATION OF NRC FY 1993 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $ K	FTE	$ K	FTE
NMLL (Research):				
Radiation Protection/Health Effects	$1,640	5.3	$350	1.1
Environmental Policy and Decommissioning	1,925	9.0	100	.4
NMLL (RES) Program Total			450	1.5
NMLL (NMSS):				
Fuel Facilities Lic./Inspections	2,500	51.9	1,310	33.2
Event Evaluator		17.2		4.3
Safeguards Licensing/Inspection	440	22.0	440	17.2
Threat and Event Assessment	1,600	14.4	123	1.7
Decommissioning	1,050	24.5	190	5.1

[1] 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.

TABLE VI.—ALLOCATION OF NRC FY 1993 BUDGET TO FUEL FACILITY BASE FEES [1]—Continued

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	$,K	FTE
Uranium Recovery (DAM SAFETY)	350	9.7	6	
NMLL (NMSS) Program Total			2,069	61.5
NMLL (MSIRIE):				
Incident Response		3.0		1.0
Total NMLL			2,519	64.0
Total Base Fee Amount Allocated to Fuel Facilities (millions)			[2] 17.2	
Less Part 170 Fuel Facility Fees (millions)				
Part 171 Base Fees for Fuel Facilities (millions)				13.7

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1993 BUDGET TO MATERIAL USERS BASE FEES [1]

	Total		Allocated to materials users	
	Program support $,K	FTE	$,K	FTE
NMLL (RESEARCH):				
Materials Licensee Performance	$550	4	$550	4
Materials Regulatory Standards	1,000	12.1	949	11.0
Radiation Protection/Health Effects	1,640	5.3	1,290	4.2
Environmental Policy and Decommissioning	1,925	9.0	1,000	4.8
Total NMLL (RES)			$3,789	20.4
NMLL (NMSS):				
Licensing/Inspection of Materials Users	$2,300	104.1	1,200	104.1
Event Evaluation	---	17.2	———	12.8
Threat and Event Assessment	1,600	12.7	89	---
Decommissioning	1,050	24.5	760	18.4
Low level waste—on site disposal	850	27.0	225	1.9
Total NMLL (NMSS):			$2,274	137.2
NMLL (MSIRIE):				
Analysis and Evaluation of Operational Data	256	8.0	125	5.0
4Total NMLL Program			$6,188	162.6
Base Amount Allocated to Materials Users (millions)				[2] $43.6
Less Part 170 Material Users Fees (millions)				$5.0
Part 171 Base Fees for Material Users (millions)				$38.6

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $13.7 million in budgeted costs to the individual fuel facilities is based, as in FY 1991 and FY 1992, primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

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

	Annual fee
	Safeguards and safety
High enriched fuel:	
Nuclear Fuel Services	$3,079,000
Babcock and Wilcox	3,079,000
Subtotal	$6,158,000
Low Enriched Fuel:	
Siemens Nuclear Power	$1,137,000
Babcock and Wilcox	1,137,000
General Electric	1,137,000
Westinghouse	1,137,000
Combustion Engineering (Hematite)	1,137,000
Subtotal	$5,685,000
UF_6 conversion:	
Allied Signal Corp	$619,000
Sequoyah Fuels Corp	619,000
Subtotal	$1,238,000

	Annual fee
	Safeguards and safety
Other fuel facilities (5 facilities at $111,000 each)	$555,000
Total	$13,636,000

One of Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, and the April 30, 1993 *per curiam* order which directed the Commission to grant an exemption for one of the facilities. As a result of the Court's decision, the NRC grants an exemption for one of CE's low enriched uranium fuel facilities for FY 1993. The NRC therefore has calculated the FY 1993 annual fees for the low enriched fuel category by dividing its budgeted costs among five licenses rather than six licenses as done previously.

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 56 percent of the $465,000 for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 27 percent of the $465,000 for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 23 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities—$58,000
Class II facilities—$25,400
Other facilities—$21,100

For spent fuel storage licenses, the generic costs of $681,000 have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an Independent Spent Fuel Storage Installation (ISFSI). This results in an annual fee of $136,200.

To equitably and fairly allocate the $38.6 million attributable to the approximately 7,400[7] diverse material users and registrants, the NRC has continued to base the annual fee on the part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

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

The constant is the multiple necessary to recover $38.6 million and is 2.3 for FY 1993. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1993, unique costs of approximately $1.9 million were identified for the medical improvement program which is attributable to medical licensees; about $115,000 in costs were identified as being attributable to radiography licensees; and about $115,000 was identified as being attributable to irradiator licensees. The changes to materials annual fees for FY 1993 varies compared to the FY 1992 annual fees. Some of the annual fees decrease while other annual fees increase. There are three reasons for the changes in the fees compared to FY 1992. First, the FY 1993 budgeted amount attributable to materials licensees is about 12 percent higher than the FY 1992 amount. Second, the number of licensees to be assessed annual fees in FY 1993 has decreased about 4 percent (about 300 licensees) below a comparative number for FY 1992. Third, the changes in the 10 CFR part 170 license application and inspection fees cause a redistribution of the costs on which the annual fees are based, since these Part 170 fees are used as a proxy to determine the annual fees. The materials fees must be established at these levels in order to comply with the mandate of OBRA-90 to recover approximately 100 percent of the NRC's FY 1993 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity on NRC Form 526.

To recover the $4.4 million attributable to the transportation class of licensees, about $1.0 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 1B. The remaining transportation costs for generic activities ($3.4 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $67,400 for users and fabricators and $1,000 for users only.

The amount or range of the FY 1993 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel	$3.1 million.
Part 70—Low enriched fuel	$1.1 million.
Part 40—UF_6 conversion	$0.6 million.
Part 40—Uranium recovery	$21,100 to 58,100.
Part 30—Byproduct Material	$690 to $26,800.[1]
Part 71—Transportation of Radioactive Material	$1,000 to $67,400.
Part 72—Independent Storage of Spent Nuclear Fuel	$136,200.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is $363,600.

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

[7] This includes approximately 600 nonprofit educational institutions licenses which were previously exempted from annual fees.

persons, of section 11.e(2) byproduct material for possession and disposal will be subject to the Category 4D fees including mill licenses that authorize decommissioning, decontamination, reclamation or site restoration activities since they are not assessed annual fees under fee Category 14.

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 (large 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 except fuel facilities, that dispose of LLW. The percentage distribution for FY 1993 has been refined 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

Of the $9.2 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($7.5 million) are allocated to the 123 large waste generators (reactors and fuel facilities) included in 10 CFR part 171 resulting in an additional charge of $61,100 per facility. Thus, the LLW charge will be $61,100 per HEU, LEU, UF_6 facility and for each of the other 5 fuel facilities. The remaining $1.7 million is allocated to the material licensees in categories that generate low level waste (1,522 licensees) as follows: $1,100 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,100 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $16,400.

Of the $5.4 million not recovered from small entities, $0.8 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $120 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, pays a base annual fee of $3,079,000 and an additional charge of $61,220 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $26,800 and an additional charge of $1,220, for a total annual fee of $28,020 for FY 1993.

The NRC notes that many licensees have indicated during the past two years that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fees will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC is issuing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

Section 171.19 Payment

This section is revised to give credit for those partial payments made by certain licensees in FY 1993 toward their FY 1993 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1993 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, if necessary. As in FY 1992, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

Because nonprofit educational institutions will be required to pay annual fees for the first time, the NRC notes two of its regulations relating to payment. The first regulation is 10 CFR 171.19(a) which indicates that the fee payment shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Bills of $5,000 or more will indicate payment by electronic fund transfer. Payment is due on the effective date of the rule and interest shall accrue from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule. The second regulation relating to payments is 10 CFR 15.35. This regulation provides for payments of debts in installments provided the debtor furnishes satisfactory evidence of inability to pay a debt in one lump sum. In accordance with this regulation, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee

guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

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

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). For FYs 1991 through 1995, OBRA–90 requires that approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1993 budget of $540.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

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

(3) The annual fees be assessed to those licensees 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 by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, discussed extensively earlier in this final rule.

VIII. Regulatory Flexibility Analysis

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

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1993. The final rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as appendix A to this final rule.

IX. Backfit Analysis

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

List of Subjects

10 CFR Part 170

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

10 CFR Part 171

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170, and 171.

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

1. The authority citation for part 170 is revised to read as follows:

Authority: 31 U.S.C. 9701; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 902).

§ 170.3 [Amended]

2. In § 170.3, the definition "Materials License" is revised to read as follows:

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71 and 72.

* * * * *

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

§ 170.8 Information collection requirements: OMB approval

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

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1993 budget is $132 per hour.

5. In § 170.21, the introductory paragraph, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

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

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

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$8,600.
Amendment	8,600.
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application—new license	5,300.
Amendment	5,300.
3. Application for export of components requiring foreign government assurances only:	
Application—new license	3,300.
Amendment	3,300.
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—new license	1,300.
Amendment	1,300.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:	
Amendment	130.

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

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

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

* * * * *

6. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$570.
Renewal	$670.
Amendment	$360.
Inspections	$660.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$590.
Renewal	$420.
Amendment	$330.
Inspections	$1,100.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	$125,000.
License, renewal, amendment.	Full cost.
Inspections	Full cost.
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
B. Licenses for possession and use of source material for shielding:	
Application—New license	$220.
Renewal	$160.
Amendment	$260.
Inspections	$550.
C. All other source material licenses:	
Application—New license	$2,500.
Renewal	$1,300.
Amendment	$450.
Inspections	$2,500.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,600.
Renewal	$1,700.
Amendment	$460.
Inspections	$9,700. [5]
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,200.
Renewal	$2,200.
Amendment	$600.
Inspections	$3,000. [5]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radio pharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,500.
Renewal	$3,000.
Amendment	$490.
Inspections	$3,300.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,300.
Renewal	$540.
Amendment	$370.
Inspections	$3,000.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$920.
Renewal	$750.
Amendment	$330.
Inspections	$1,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,300.
Renewal	$1,000.
Amendment	$330.
Inspections	$1,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$5,200.
Renewal	$4,700.
Amendment	$630.
Inspections	$4,100.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,400.
Renewal	$2,300.
Amendment	$800.
Inspections	$1,100.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,600.
Renewal	$2,600.
Amendment	$1,100.
Inspections	$1,000.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,100.
Renewal	$1,400.
Amendment	$370.
Inspections	$1,800.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,900.
Renewal	$1,400.
Amendment	$260.
Inspections	$1,000.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$2,200.
Amendment	$620.
Inspections	$4,700.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,400.
Renewal	$1,500.
Amendment	$690.
Inspections	$2,200.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,700.
Renewal	$2,000.
Amendment	$670.
Inspections	$2,400.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,800.
Renewal	$2,800.
Amendment	$690.
Inspections	$3,500 [5]
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$570.
Renewal	$570.
Amendment	$360.
Inspections	$1,500.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$3,900.
Renewal	$2,100.
Amendment	$420.
Inspections	$2,300.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$250.
Inspections	$2,800.
D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to the fees in Category 2.A.	
License, renewal, amendment.	Full cost.
Inspections	Full cost.
5. Well logging:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,700.
Renewal	$3,900.
Amendment	$650.
Inspections	$3,600.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment.	Full cost.
Inspections	$1,300.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,500.
Renewal	$2,900.
Amendment	$700.
Inspections	$4,500.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,700.
Renewal	$1,200.
Amendment	$550.
Inspections	$2,200.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,600.
Renewal	$3,500.
Amendment	$500.
Inspections	$8,600.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,100.
Renewal	$1,400.
Amendment	$500.
Inspections	$2,100.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$660.
Renewal	$700.
Amendment	$480.
Inspections	$1,000.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,700.
Amendment—each device	$1,300.
Inspections	Full cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,800.
Amendment—each device	$660.
Inspections	Full cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each device	$790.
Amendment—each device	$260.
Inspections	Full cost.
D. Safety Evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$400.
Amendment—each source	$130.
Inspections	Full cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment.	Full cost.
Inspections	Full cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$370.
Renewal	$280.
Amendment	$320.
Inspections	Full cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment.	Full cost.
Inspections	Full cost.
12. Special projects:	
Approvals and preapplication/licensing activities.	Full cost.
Inspections	Full cost.
13. A Spent fuel storage cask Certificate of Compliance:	
Approvals	Full cost.
Amendments, revisions, and supplements.	Full cost.
Reapproval	Full cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance.	Full cost.
C. Inspections related to storage of spent fuel under §72.210 of this chapter.	Full cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full cost.
Inspections	Full cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b):	
Application—New license	$8,600.
Amendment	$8,600.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch only, for example, those actions under 10 CFR 110.41(a)(2)–(8):	
Application—New license	$5,300.
Amendment	$5,300.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application—New license	$3,300.
Amendment	$3,300.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—New license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review:	
Amendment	$130.
16. Reciprocity: Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20:	
Application (each filing of form 241).	$700.
Renewal	N/A.
Amendment	N/A.
Inspections	([6])

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

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

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

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

(d) *Amendment fees*—

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

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

(e) *Inspection fees*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnotes 5 and 6 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

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

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

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

[6] Fees as specified in appropriate fee categories in this section.

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

7. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L.

100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

§ 171.5 [Amended]

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

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued by the NRC pursuant to the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71 and 72.

* * * * *

9. A new § 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. In § 171.11, paragraph (a), (b), and (d) are 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—

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

(ii) A liquid fuel loading; or

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

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

* * * * *

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

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

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

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

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

§ 171.15 Annual fees: Reactor operating licenses.

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

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1993 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1993, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1993 surcharge to be added to each operating power reactor is $223,000. This amount is calculated by dividing the total cost for these activities ($24.5 million) by the number of operating power reactors (109.7).

(d) The FY 1993 part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in thousands]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2,964	$223	$3,187	$22,309
Combustion Eng	15	3,013	223	3,236	48,540
GE Mark I	24	2,939	223	3,162	75,888
GE Mark II	8	2,939	223	3,162	25,296
GE Mark III	4	3,031	223	3,254	13,016
Westinghouse	51	2,972	223	3,195	162,945
Totals	109				$347,994

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

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

Research reactor	$62,100
Test reactor	$62,100

* * * * *

12. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1993 as follows:

Small businesses and small not-for-profit organizations (gross annual receipts)	Maximum annual fee per licensed category
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private Practice Physicians (Gross Annual Receipts)	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small Governmental Jurisdictions (Including Publicly Supported Educational Institutions) (Population)	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not state or publicly supported, and have 500 Employees or Less	1,800

* * * * *

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

(d) The FY 1993 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2] [3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities			
High Enriched Fuel			
Babcock and Wilcox	SNM–42	70–27	$3,079,000
Nuclear Fuel Services	SNM–124	70–143	3,079,000
Low Enriched Fuel			
B&W Fuel Company	SNM–1168	70–1201	1,137,000
Combustion Engineering (Hematite)	SNM–33	70–36	1,137,000
General Electric Company	SNM–1097	70–1113	1,137,000
Siemens Nuclear Power	SNM–1227	70–1257	1,137,000
Westinghouse Electric Co.	SNM–1107	70–1151	1,137,000
Surcharge			61,220
A.(2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form.			111,000
Surcharge			61,220
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).			136,200
Surcharge			1,220
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.			1,600
Surcharge			120
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2).			1,900
Surcharge			1,220
E. Licenses for the operation of a uranium enrichment facility.			N/A [4]
2. Source material:			
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			619,000
Surcharge			61,220
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, ore buying stations, ion exchange facilities and in processing ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode			
Class I facilities [5]			58,100
Class II facilities [5]			25,400
Other facilities			21,100
Surcharge			120
B. Licenses which authorize only the possession, use and/or installation of source material for shielding.			690
Surcharge			120
C. All other source material licenses			7,700
Surcharge			1,220
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.			17,200
Surcharge			1,220
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.			5,100
Surcharge			1,220
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license.			10,600
Surcharge			1,220

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees[1,2,3]
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license.			5,300
Surcharge			120
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).			3,500
Surcharge			120
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.			4,500
Surcharge			120
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.			21,900
Surcharge			120
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.			6,000
Surcharge			120
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.			11,100
Surcharge			120
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.			5,900
Surcharge			120
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.			5,200
Surcharge			120
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to part 30 and 33 of this chapter for research and development that do not authorize commercial distribution.			13,100
Surcharge			1,220
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution.			4,500
Surcharge			1,220
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D.			5,300
Surcharge			1,220
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license.			17,400
Surcharge			120
P. All other specific byproduct material licenses, except those in Categories 4A through 9D.			2,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2]
Surcharge			120
4. Waste disposal and processing:			
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.			$115,000
Surcharge			1,220
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.			14,300
Surcharge			1,220
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.			6,700
Surcharge			1,220
D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2).			7,700
Surcharge			120
5. Well logging:			
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.			11,300
Surcharge			120
B. Licenses for possession and use of byproduct material for field flooding tracer studies.			13,700
Surcharge			1,220
6. Nuclear laundries:			
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.			13,900
Surcharge			1,220
7. Human use of byproduct, source, or special nuclear material:			
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.			14,600
Surcharge			120
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [3].			26,800
Surcharge			1,220
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [3].			5,100
Surcharge			120
8. Civil defense:			
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.			1,900
Surcharge			120
9. Device, product, or sealed source safety evaluation:			
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.			8,500
Surcharge			120

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2] [3]
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices			4,200
Surcharge			120
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution			1,800
Surcharge			120
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel			920
Surcharge			120
10. Transportation of radioactive material:			
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers			
Spent Fuel, High-Level Waste, and plutonium air packages			[6] N/A
Other Casks			[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs			
Users and Fabricators			67,400
Users			1,000
Surcharge			120
11. Standardized spent fuel facilities			[6] N/A
12. Special Projects			[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance			[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210			136,200
Surcharge			120
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72			[7] N/A
15. Import and Export licenses			[8] N/A
16. Reciprocity			[8] N/A
17. Master materials licenses of broad scope issued to Government agencies			363,600
Surcharge			16,520
18. DOE Certificates of Compliance			[10] 1,013,000
Surcharge			120

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

Annual fees will be assessed based on whether a licensee holds a valid license with the NRC which authorizes possession and use of radioactive material. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration or approval held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

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

[3] For FYs 1994 and 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

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

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

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

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

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

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

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

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

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

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $61,100 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,100 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $16,400 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $120 has been added to each fee Category, except Categories 1.E, 10.A., 11., 12., 13.A., 14., 15. and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $120 additional charge.

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

§ 171.19 Payment.

* * * * *

(b) For FY 1993 through FY 1995, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. In the event the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1993 through 1995, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 shall be paid once a year as billed by the NRC.

Dated at Rockville, MD, this 9th day of July 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

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

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

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

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

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

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

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991, the amount collected was approximately $445 million, and for FY 1992, the amount collected was approximately $2.5 million. The amount to be collected in FY 1993 is approximately $518.9.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) and FY 1992, (57 FR 32691; July 23, 1992) based on a careful evaluation of over 500 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991 and FY 1992. The NRC has used the same methodology established in the FY 1991 and FY 1992 rulemakings to establish the fees to be assessed for FY 1993 except for the LLW surcharge. The Commission has changed its policy in one area and will assess annual fees to nonprofit educational institutions.

II. Impact on Small Entities

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

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991 and FY 1992 fee rules.

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

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

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

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

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

Over the past two years, approximately 2,300 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

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

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered

alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) and the FY 1992 rule (57 FR 32691; July 23, 1992). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

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

The NRC established, and is continuing for FY 1993, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining whether the percent of gross receipts that should be charged to a small entity. For FY 1993, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR part 170 with Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees or any adjustments to these fees during the past year do not have a significant impact on them. In issuing this final rule for FY 1993, the NRC concludes that the materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1993 costs ($33.2 million of the total $38.6 million) attributable to them. Therefore, the NRC is continuing, for FY 1993, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

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

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

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991 and FY 1992 fee rules in this final rule establishing the FY 1993 fees. Therefore, the analysis and conclusions established in the FY 1991 and FY 1992 rules remain valid for this final rule for FY 1993.

[FR Doc. 93–16885 Filed 7–19–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 264b

Regulations Regarding Foreign Gifts and Decorations

CFR Correction

In title 12 of the Code of Federal Regulations, parts 220 to 299, revised as of January 1, 1993, on page 684, in § 264b.3 some of the text of paragraphs (c) and (d) was inadvertently omitted. As corrected the text of paragraphs (c) and (d) should read as follows:

§ 264b.3 Foreign gifts.

* * * * *

(c) *Tangible gifts of more than minimal value.* A tangible gift of more than minimal value tendered by a foreign government may be accepted when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Such a gift accepted under these circumstances is deemed to have been accepted on behalf of the United States, and, upon acceptance, it shall become the property of the United States. Within 60 days after accepting a gift under these circumstances the member or employee must deposit the gift with the Secretary of the Board.

(d) *Travel or expenses for travel.* Board Members and employees may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and is permitted by the Board. Requests for Board approval of acceptance of such expenses shall be submitted to the Vice Chairman of the Board.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 93–ASW–3; Special Condition 29–ASW–10]

Special Condition: Bell Helicopter Textron Inc. Model 230 Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

AE 49-2
PDR
023

JUL 21 1993

MEMORANDUM FOR: Donald H. Lanham, Chief
Docketing and Document Control Desk Section
IRM/DCB

FROM: C. James Holloway, Jr., Assistant for
Fee Policy and Rules, OC

SUBJECT: FEE WORKPAPERS FOR 10 CFR PARTS 170 AND 171
FINAL RULE -- FY 1993

Enclosed are two sets of the workpapers in support of the Final Rule scheduled for publication in the Federal Register in the next few days. Please advance one set of the workpapers to the Public Document Room immediately and ask the PDR staff to time-stamp them upon receipt and put them on display for immediate perusal. The other set is for processing through the NUDOCS system. In this way, the PDR gets an advanced copy of an additional copy through normal processing.

Thank you for your assistance in this matter.

Original signed by James Holloway, Jr.

C. James Holloway, Jr.
Assistant for Fee Policy
and Rules, OC

Enclosures:
As stated

DISTRIBUTION: OC R/F, OC S/F, JHolloway, DDandois, JFunches, GJackson

OFFICE:	OC	
NAME:	JHolloway	
DATE:	7/21/93	

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