



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

APR - 7 1993

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PDR

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

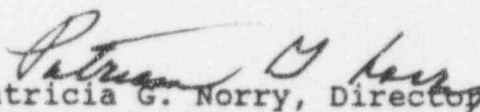
FROM: Patricia G. Norry, Director
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON PROPOSED RULE ENTITLED
REVISION OF FEE SCHEDULES; 100% FEE RECOVERY,
FY 1993

The Office of Administration concurs, subject to the comments provided, on the proposed rule package that amends fee schedules to 10 CFR Parts 170 and 171. We have attached a marked copy of the proposed rule package that presents our comments.

The Office of Information Resources Management has informed us that this rule must contain an information collection section in the codified text of each affected 10 CFR Part. We have included the appropriate text for each section. You should contact Brenda Shelton (492-8132) for further guidance concerning this matter.

If you have any questions, please contact Alice Katoski on 492-7928 or Michael Lesar on 492-7758.


Patricia G. Norry, Director
Office of Administration

Attachment: As stated

cc: Brenda Shelton, IRM

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AE49

Revision of Fee Schedules; 100% Fee Recovery, FY 1993;

Proposed Rule for FY 1991 and 1992 Implementing
the U.S. Court of Appeals Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement Public Law 101-508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1993 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1993 is approximately \$518.9 million.

In addition, the NRC is soliciting comments on a proposed rule implementing the March 16, 1993, U.S. Court of Appeals for the District of Columbia Circuit decision remanding to the NRC portions of the FY 1991 annual fee rule. The remanded portions pertain to: (1) the NRC's decision to exempt nonprofit educational institutions, but not other enterprises, on the ground in part that educational institutions are unable to pass

through the costs of annual fees to their customers, and (2) the Commission's decision to allocate generic costs associated with low-level waste (LLW) disposal by groups of licensees, rather than by individual licensee. The NRC ~~in this proposed rule~~ is soliciting comments on the alternative approaches that may be taken on these issues in light of the court's decision. Because the court's reasoning calls into question portions of the NRC's FY 1992 annual fee rule, this proposed rule also addresses that rule as well.

DATES: The comment period expires (30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101-508 requires that NRC collect the FY 1993 fees by September 30, 1993, and it is the NRC's current intent to resolve the court's remand issues no later than the issuance of the FY 1993 final rule, requests for extensions of the comment period will not be granted.

ADDRESSEES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays.

small entity under the NRC's size standards. A lower-tier small entity fee of \$400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

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

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

to "phase-in" CE's fees, or to justify special treatment of any licensee or class of licensees. However, as part of its continuing efforts to reevaluate and improve fee collection process and policy, the Commission seeks public comment from interested parties on ways that the Commission feasibly could evaluate the passthrough capability of its licensees.

That leaves the question whether to continue to exempt nonprofit educational institutions, an exemption justified in the past both because of "passthrough" concerns and because of the societal value of education. The Commission proposes to continue to exempt these licensees from fees for FYs 1991, 1992, and 1993, as it has for many years in the past, but solely because of its policy interest in supporting nuclear-related education. The Commission continues to believe that "educational research provides an important benefit to the nuclear industry and the public at large and should not be discouraged." Final FY 1991 Rule, 56 ^{FR} ~~Fed. Reg.~~ ^{at 31477} ^{July 10, 1991} A vibrant nuclear education sector also is important as a source of talent and ideas for the NRC itself and for the whole government.

As the Commission noted in the statement of considerations for the 1991 fee rule, many colleges and universities supported continuing this longstanding exemption, as it "facilitates academic research and educational use of licensed materials, [which] both furthers understanding of important research

questions and provides training in nuclear science." See NRC
Final Rule, 56 ~~FR~~ ^{July 10, 1991} ~~Fed Reg.~~ at 31477, 11991. The commenters
described how imposition of fees on their nuclear programs would
lead, in many cases, to severe cutbacks in and shutdowns of these
programs. This in turn would lead to shortages of scientific
personnel trained in the use of radioactivity in such areas as
reactor safety, with detrimental effects suffered not only by
nuclear science but by society at large. The court itself
suggested that NRC financial incentives to education may be
justified because of the possibility of "externalize benefits
that cannot be captured in tuition or other market prices." Slip
op. at 8.

The Commission therefore is soliciting comments on whether
to leave the exemption for nonprofit educational institutions in
place on the ground of supporting education for the benefits it
provides both to the nuclear field and to society as a whole. In
particular, the Commission invites public comments on the court's
suggested "externalize benefits" approach. The Commission also
invites public comments on whether to discontinue the educational
exemption.

LLW Costs

a. Court Decision. Allied argued to the court that the
Commission allocated generic LLW costs for fuel facilities, which

totaled \$1.9 million in FY 1991, in an arbitrary and capricious manner. The court assumed that the agency possessed licensee-specific LLW generation data, and found that the NRC lacked justification for allocating LLW costs simply by the amount of LLW generated per class, instead of allocating the costs licensee-by-licensee. The court stated:

[a]ssuming that the Commission calculated each class's quantity of LLW waste from data supplied by each licensee (as seems necessarily true), it is hard to see any administrative problem with apportioning the fees within the class on the basis of output; the data are available and the required computations would be rudimentary.

Slip op. at 11.

To avoid what it viewed as an unjust windfall (i.e., complete vacation of the LLW fees and full refunds), the court did not vacate this part of the FY 1991 rule. It instead remanded the LLW issue to the Commission for reconsideration. The court indicated that if on remand the Commission decided to charge LLW costs based on the amount of waste produced by each licensee, licensees could permissibly receive refunds for the difference between what they paid under the old and new rules, rather than total refunds.

b. Proposed Resolution. The options for addressing the remand should be developed and analyzed in view of the purpose of the NRC budgeted resources for LLW disposal. To implement the

Low-Level Radioactive Waste Policy Amendments Act of 1985, and X
the Atomic Energy Act, the NRC must perform certain generic
activities. These activities include developing rules, policies
and guidance, performing research, and providing advice and
consultation to LLW compacts and Agreement States who will
license some of the future LLW disposal sites. The budgeted
costs for these types of generic activities are generally
recovered in annual fees from the class of licensees to whom the
activities directly relate. (For example, reactor research is
recovered from reactor licensees, and guidance and rule
development for regulation of uranium producers is recovered from
uranium recovery licensees.) However, for LLW generic
activities, there is no disposal site licensed by the NRC from
whom to recover the generic budgeted costs that must be
incurred.³ Since there is no LLW disposal site licensee, these
costs must be allocated to other NRC licensees in order to
recover 100% ^{2 percent} of the NRC budget as required by OBRA-90. In X
addition, the LLW costs budgeted by NRC in FY 1991, FY 1992, and
FY 1993 are not for the wastes being disposed during these years
or prior years, but are devoted to creating the regulatory
framework for disposal of LLW at some future date.⁴ In fact,

³There are organizations that hold a NRC license for the
disposal of Special Nuclear Material (SNM). The LLW at issue is
not SNM, but other byproduct and source materials.

⁴In 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
15
^

the sites where LLW was disposed of in FY 1991-1993 are licensed and regulated by Agreement States, not the NRC.

Percent
Given the 100% budget recovery requirement of OBRA-90, and the fact that there are no NRC LLW licensees to recover FY 1991-1993 budgeted costs for NRC generic activities, the basic question is how should NRC allocate these costs. Congress spoke briefly to this issue in developing OBRA-90 by recognizing that certain expenses cannot be attributed directly either to an individual license 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 concluded that all classes of NRC licensees that generate a substantial amount of LLW should be assessed annual fees to cover the agency's generic LLW costs. The NRC viewed current LLW generation as a reasonable proxy for benefits likely to accrue in the future from the NRC's LLW program. The court appeared to approve this basic approach, but questioned the method for determining the amount of the fee to be assessed to each of the

licensees that generate LLW. The NRC believes that there are three alternatives (with variations within each alternative) for determining the LLW fee amount for the various licensees. However, as noted above, none of these alternatives is intended to recover the cost of a service provided during a particular year, but instead is intended to recover today's costs for a future benefit (the availability of LLW disposal).

Within ^{this} ~~the above~~ context, and given the court opinion, the Commission is considering the following three alternatives for determining the amount of the LLW surcharge (fee) to be assessed to the various licensees:

- (1) Assess all licensees that generate LLW a uniform annual fee. In FY 1993, the uniform annual fee would be \$7,900.
- (2) Allocate the LLW budgeted cost based on the amount of LLW disposed of by groups of licensees and assess each licensee in a group the same annual fee as was done in the FY 1991 and FY 1992 rules.
- (3) Assess each licensee an annual fee based on the amount of waste generated/disposed by the individual licensee, as was suggested by Allied Signal and by the court.

Under alternative 1, the NRC would not try to distinguish between the potential future benefits to the diverse NRC licensees, but would assess the same LLW fee to all NRC licensees that generate low-level waste, regardless of amount of LLW generated. The theory is, as expressed by the court, "that the real benefit of LLW disposal is merely the availability of such services." Slip op. at 11. This alternative would result in a hospital, for example, paying the same LLW annual fee as a reactor, ^{which} ~~who~~ would pay the same LLW annual fee as a fuel facility. The Commission currently has difficulty perceiving this as a fair and equitable means to determine licensees' future benefits from the Commission's LLW program, but will consider the approach after receiving comments. X

Alternative 2 rests on the premise that it is not possible to predict the exact future benefit for each individual licensee (for reasons discussed below), but that current volume of LLW disposed by each class of licensees is a good gross indicator of the relative future benefit to the various classes. In other words, the LLW volume disposed today is a good proxy for future benefits -- but in a "macro", not a "micro" sense. The Commission believes fairness and equity support keeping this broad approach in effect.

There are various ways to separate the licensees by classes. The FY 1991-1993 rules separate the licensees by the same class

that are used for all other annual fees. Obviously this approach results in efficiencies for the NRC annual fee billing process. But there are other possibilities. The Commission could divide the licensees into two categories -- "large" waste generators and "small" waste generators. Under this alternative, reactor and major fuel facilities, for example, could comprise a single group of large generators paying larger fees; and other licensees could comprise a group of small generators paying smaller fees.

Alternative 3 would base the annual fee for LLW on the amount of waste generated by each licensee during a particular year. This is the approach apparently favored by the court, and would of course be a "fair and equitable" indicator of future benefits if (as the court assumed) the NRC had ready access to reliable licensee-by-licensee data on waste generation. But it does not. The Commission's gross data on LLW derive from LLW disposal data it receives through various means from existing LLW waste disposal sites. These data are roughly accurate with regard to large classes of licensees, as it is reasonable to assume that individual distortions even out over the years and over relatively large numbers of licensees. But the NRC sees problems in using the waste disposal data as a proxy for future benefits to individual licensees. The amount of waste disposed of annually by individual licensees is affected by many variables that do not relate to the amount of waste generated by each licensee.

For one thing, many licensees (particularly large ones) have access to technology that compacts large volumes of LLW into small packages for disposal. Thus, individual disposal data do not necessarily reflect a fair and accurate comparison of waste generated among individual licensees. In addition, some licensees by choice or by law store waste (temporarily) rather than dispose of it. These licensees' LLW would not be picked up in the NRC's disposal data. For example, NRC licensees in Michigan did not dispose of any waste in 1991 or 1992 because by law they were not permitted to use existing LLW disposal sites. However, these licensees obviously will benefit in the future just as much as, or maybe more than, others from NRC regulatory costs do today, since ultimately Michigan must dispose of its LLW. But under a licensee-by-licensee alternative based on disposal data, the annual fee assessed to licensees in Michigan would have to be zero, implying no future benefits to each licensee. Finally, it is far from clear that most NRC licensees would willingly permit use of individual disposal data for fee purposes, due to proprietary concerns. Plainly, if the NRC developed a fee structure based on individual licensee disposal data, the amount of LLW disposed of by specific licensees would be revealed to the public and to competitors.

On balance, while the NRC recognizes that there are many conceivable ways to allocate its low-level waste cost, it does

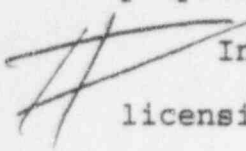
Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the NRC proposes that the agency-wide professional hourly rate, which is used to determine the Part 170 fees, be increased about ⁷~~seven~~ percent from \$123 per hour to \$132 per hour (\$229,912 per direct FTE). The rate is based on the FY 1993 direct FTEs and that portion of the FY 1993 budget that is not recovered through the appropriation from the NWF.

Second, the NRC proposes that the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees be increased 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 should be increased in some categories to reflect the costs incurred in completing the licensing actions.

guidance in recent years has emphasized that inspections be more thorough, in-depth[^] and of higher quality. The proposed inspection fees are based on the new average professional staff hours necessary to conduct the inspections multiplied by the proposed professional hourly rate for FY 1993 of \$132 per hour.

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

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

Third, a new fee category 4D is proposed 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 are being broadened to include underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

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

The NRC proposes five amendments to 10 CFR Part 171. First, NRC proposes to amend §§ 171.15⁶ and 171.16 to increase 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, the NRC proposes to amend § 171.11 by ^{revising} ~~renumbering~~ and ~~restating paragraph (a) as (a)(1), and by adding a new~~ ^(a) ~~paragraph (a)(2).~~ In addition, paragraphs (b), and (d), would be revised. These proposed changes would incorporate the specific statutory exemption provided in the Energy Policy Act of 1992 for

certain nonpower (research) reactors and make clarifying changes to the exemption provision for materials licensees in §§ 171.11(b) and (d). 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) ¹the reactor is used primarily for educational training and academic research purposes and;

(2) ¹the 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.

The NRC proposes to amend §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 10 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 proposing to exempt from the FY 1993 annual fees those 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. 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 FY 1993 annual fees.

Fourth, a new category 4D is proposed to specifically segregate and identify licenses authorizing the receipt from other persons of byproduct material as defined in Section

171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The charges are consistent with the Congressional guidance in the Conference Committee Report, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692-93.

The NRC notes that many licensees have indicated during the past ²two 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 would be 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 proposing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

C. FY 1993 Budgeted Costs.

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

Table I
Recovery of NRC's FY 1993 Budget Authority

<u>Recovery Method</u>	<u>Estimated Amount (\$ in Millions)</u>
Nuclear Waste Fund	\$21.1
Part 170 (license and inspection fees)	116.6
Other receipts	.1
Part 171 (annual fees)	
Power Reactors	316.5
Nonpower Reactors	.5
Fuel Facilities	14.4
Spent Fuel Storage	.7
Uranium Recovery	.5
Transportation	4.4
Material Users	<u>35.1^{1/}</u>
Subtotal	\$372.1 \$509.9

X

Costs remaining to be recovered not identified above	30.1
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Total	\$540.0
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^{1/}Includes \$5.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The NRC is proposing that the \$30.1 million identified for those activities ~~which~~ ^{that} are not identified as either 10 CFR Parts 170 or 171 or the NWF in Table I be distributed among the NRC classes of licensees as follows:

\$27.0 million to operating power reactors;

\$1.4 million to fuel facilities; and

\$1.7 million to other materials licensees.

In addition, approximately \$5.3 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower [^]tier small entity fee of \$400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1993 budget authority in accordance with OBRA-90, the NRC is proposing to recover \$4.5 million of the \$5.3 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 \$289,000 per operating power reactor; \$100,000 for each HEU, LEU, UF₆ each other fuel facility license; \$1,600 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 \$2.9 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 would be between approximately \$710,000 million and \$3.3 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

~~These~~ proposed 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 would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in Section IV of this proposed rule.

The NRC notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," Florida Power & Light Co. v. NRC, 846 F.2d 765, 770 (D.C. Cir. 1988), cert. denied, 109

S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101-508 have acknowledged the D.C. Circuit's holding that the Commission was within its legal discretion not to impose fees on all licensees.

IV. Section-by-Section Analysis

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

Part 170

Section 170.8 Fee

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	<u>18.0</u>
Total direct FTE	1,619.1 ^{2/}

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

^{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. X

(GfA)

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 ¹ 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	<u>14.1</u>
Total nonprogram support obligations	\$352.0
Program support	<u>166.9</u>
Total Budget Authority . . .	\$518.9
Less direct program support and offsetting receipts	<u>146.6</u>
Budget Allocated to Direct FTE	\$372.3
Professional Hourly Rate . . .	\$132/hour

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 proposed 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 would be assessed at the FY 1993 rate shown in § 170.20. The NRC is proposing to revise the amount of the import and export licensing fees in § 170.21, facility Category K to provide for the proposed increase in the hourly rate from \$123 per hour to \$132 per hour.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, July 10, 1991, and July 23, 1992, rules as appropriate. For topical report applications currently on file ^{that} ~~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} ~~and~~ supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

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

The licensing and inspection fees in this section would be 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 proposed 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 ^{biennially} 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 ^{that} ~~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 users for licensing actions (new licenses, renewals, and amendments) and for inspections. The full-cost [^] license/inspection fees (e.g., for reactor and fuel facilities) X

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 proposed 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 proposed 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 ^ensure public X

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 would have increases of less than 25 percent, with some having slight decreases. For license renewals, approximately 85 percent would have increases of less than 25 percent, with some having decreases; and for amendments, approximately 90 percent would have increases of less than 25 percent, with some having decreases. Only 2 percent of the materials license population would have increases of 100 percent or greater, for example, in the renewal area, irradiator licenses (fee Categories 3F and 3G) and licenses authorizing distribution of items containing byproduct material to persons generally licensed under 10 CFR Part 31 (fee Category 3J).

For materials inspections, a distribution of the changes to the inspection fees shows that inspection fees would increase by at least 100 percent for 19 percent of the licenses. The largest increases would be for inspections conducted of those licenses authorizing byproduct material for (1) processing or manufacturing of items for commercial distribution (fee category 3A); (2) broad scope research and development (fee category 3L); and (3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses would have increases of more than 50 percent. The primary reason for these relatively large increases is that the

average number of hours on which inspection fees are based have 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. 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. X

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

The amounts of the licensing and inspection flat fees were rounded, as in FY 1991 and FY 1992, by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to

the nearest \$10.

The proposed fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D^{*}, 10.B^{*}, 15A through 15E[^]; and 16. The proposed 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, will apply to those professional staff hours expended on or after the effective date of this rule.

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

is not exposed for irradiation as to the exposed source irradiators. The average costs of conducting license reviews and performing inspections of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where the source is exposed during irradiation.

A new category 4D is proposed 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 proposed 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.

Insert 171.8 here

Part 171

Section 171.11 Exemptions.

Paragraph (a) of this section is revised and renumbered as (a)(1). A new paragraph (a)(2) is added ^{to} ~~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) ^A If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain--

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

^B
(II) A liquid fuel loading; or

^C
(LFF) An experimental facility in the core in excess of
16 square inches in cross^osection. X

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.

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

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

Earlier in this notice, the NRC ~~has~~ discussed its proposal to continue exempting nonprofit educational institutions from

annual fees for 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.

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

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

comment on the need for changes to NRC fee policy in a separate notice that is expected to be published in the Federal Register in April 1993. The Federal Register notice for this action would allow for a 90-day public comment period.

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 ~~X~~ 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 proposing to exempt 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. All other licensees and approval holders who held a license or approval on October 1, 1992, are subject to the FY 1993 annual fees.

2.	Crystal River 3	"	"	\$2,898,000
3.	Davis Besse 1	"	"	2,898,000
4.	Oconee 1	"	"	2,898,000
5.	Oconee 2	"	"	2,898,000
6.	Oconee 3	"	"	2,898,000
7.	Three Mile Island 1	"	"	2,898,000

General Electric ^{*}
^

1.	Browns Ferry 1	Mark I	\$2,873,000
2.	Browns Ferry 2	" "	2,873,000
3.	Browns Ferry 3	" "	2,873,000
4.	Brunswick 1	" "	2,873,000
5.	Brunswick 2	" "	2,873,000
6.	Clinton 1	Mark III	2,965,000
7.	Cooper	Mark I	2,873,000
8.	Dresden 2	" "	2,873,000
9.	Dresden 3	" "	2,873,000
10.	Duane Arnold	" "	2,873,000
11.	Fermi 2	" "	2,873,000
12.	Fitzpatrick	" "	2,873,000
13.	Grand Gulf 1	Mark III	2,965,000
14.	Hatch 1	Mark I	2,873,000
15.	Hatch 2	" "	2,873,000
16.	Hope Creek 1	" "	2,873,000
17.	LaSalle 1	Mark II	2,873,000
18.	LaSalle 2	" "	2,873,000

<u>Category of Costs</u>		FY 1993 Budgeted Costs (\$ In Millions)	
1.	Activities not attributable to an existing NRC licensee or class of licensee:		
a.	reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions;	\$5.2	
b.	international cooperative safety program and international safeguards activities; and	8.4	
c.	67% of low-level waste disposal generic activities;	6.3	X
2.	Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:		
a.	activities associated with nonprofit educational institutions; and	7.1	
b.	costs not recovered from Part 171 for small entities.	<u>4.5</u>	
Total Budgeted Costs		\$31.5	

The annual additional charge is determined as follows:

<u>Total budgeted costs</u>	=	<u>\$31.5 million</u>	=	\$289,000 per
Total number of operating reactors		109		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 \$2,906,000 and an additional charge of \$289,000 for a total annual fee of \$3,195,000 for FY 1993.

Paragraph (d) would be 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) would be revised to show the amount of the FY 1993 annual fee for non-power (test and research) reactors. In FY 1993, \$520,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in an annual fee of \$65,000 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, for ^{its} ~~their~~ research reactor. X

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) would be 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 \$55.1 million applicable to fuel facilities, uranium recovery facilities,

The allocation of the NRC's \$14.4 million in budgeted costs to the individual fuel facilities is based, as in FY 1991 and FY 1992, primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

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

	<u>Annual Fee</u>	
<u>High Enriched Fuel</u>	<u>Safeguards and Safety</u>	X
Nuclear Fuel Services	\$3,196,000	
Babcock and Wilcox	<u>3,196,000</u>	
Subtotal	\$6,392,000	
<u>Low Enriched Fuel</u>		
Siemens Nuclear Power	\$1,219,000	
Babcock and Wilcox	1,219,000	X
General Electric	1,219,000	
Westinghouse	1,219,000	
Combustion Engineering (Hematite)	<u>1,219,000</u>	
Subtotal	\$6,095,000	

tion of Radioactive
Material

\$1,000 to \$67,400

Part 72 - Independent
Storage of Spent Nuclear
Fuel

\$146,600

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

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

A new Category 4D is proposed 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 changes~~x~~ 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. X

Paragraph (e) would be amended to establish the additional charge ^{that} ~~which~~ is to be added to the base annual fees shown in paragraph (d) of this proposed rule. The options the NRC is considering in this area are discussed at some length in Section II of this notice. This surcharge will continue to be shown, for convenience, with the applicable categories in paragraph (d). X
Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. The NRC has continued the previous policy decision to use the volume of waste disposed of by materials licensees to determine the percent of these LLW costs to be recovered from materials licensees. The additional charge will recover approximately 33 percent of the NRC budgeted costs of \$9.4 million relating to LLW disposal generic activities because these materials licensees disposed of 33 percent of the total LLW that was disposed of by NRC licensees in 1990-1991. This percentage calculation for FY 1993 differs from the calculation for FY 1991 and FY 1992 because LLW disposed by Agreement State licensees was subtracted from the total prior to calculation of the percentage. The FY 1993 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

<u>Category of Costs</u>	FY 1993 Budgeted Costs (\$ In Millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 33% of LLW disposal generic activities.	\$3.1

Of the \$3.1 million in budgeted costs shown above for LLW activities, 45 percent of the amount (\$1.4 million) would be allocated to fuel facilities included in Part 171 (14 facilities), as follows: \$100,000 per HEU, LEU, UF₆ facility and for each of the other 5 fuel facilities. The remaining 55 percent (\$1.7 million) would be allocated to the material licensees in categories that generate low-level waste (1,049 licensees) as follows: \$1,600 per materials licensee except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the \$1,600 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 Category 17, which also generate and/or dispose of low level waste, is \$23,700 ~~for Category 17.~~

Of the \$5.3 million not recovered from small entities, \$0.8 million would be 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, would pay a base

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 proposed amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

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

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

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

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

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

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

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

The NRC's FY 1991 annual fee rule was largely upheld recently by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, discussed extensively earlier in this notice.

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

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

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

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

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

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 98 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 902).

2. *A new Section 170.8 is added to read as follows:*
§ 170.8 Information collection requirements: OMB approval

Insert text here

32. 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.

~~3.~~ 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)

Amendment \$5,300

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

Application-new license \$3,300

Amendment \$3,300

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

Application-new license \$1,300

Amendment \$1,300

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

Amendment \$130

^{1/} Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of ^{these} ~~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, July 10, 1991, and July 23,

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

5
X. 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

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).

^{SP}
~~Application~~ New license \$8,600
 Amendment \$8,600

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

^{SP}
~~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~~ ^{3/0} ~~New~~ license \$3,300
Amendment \$3,300

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

~~Application~~ ^{3/0} ~~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

*Please
line up
these and
subsequent
amounts.*

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	Fees as specified in appropriate fee categories in this section.

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

(a) Application fees - Applications for new materials licenses and approvals; applications to reinstate expired 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.

the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

^{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~~ ^{these} 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, July 10, 1991, and July 23, 1992, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by \$170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

²/Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which

an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

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

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

^{6/}5. 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).

7. A new Section 171.8 is added to read as follows:
§ 171.8 Information collection requirements: OMB approval

Insert text here
8. In § 171.11, paragraphs (a), (b), and (d) are revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for:

(1) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

(i) Human use;

(ii) Remunerated services to other persons;

(iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; and

(iv) Activities performed under a Government contract.

(2) Federally owned research reactors used primarily for

educational training and academic research purposes. For purpose 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~~o~~section. X

(b) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extra^{or}_^ X
~~ordinary~~ circumstances, any exemption requests filed beyond that

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.

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

§ 171.15 Annual Fees: Reactor operating licenses.

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

(b) ***

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

(c) ***

(2) The FY 1993 surcharge to be added to each operating power reactor is \$289,000. This amount is calculated by dividing the total cost for these activities (\$31.5 million) by the number of operating power reactors (109).

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

Part 171 Annual Fees by Reactor Category¹

(Fees in Thousands)

<u>Reactor Vendor</u>	<u>Number</u>	<u>Base Fee</u>	<u>Added Charge</u>	<u>Total Fee</u>	<u>Estimated Collections</u>
Babcock/Wilcox	7	\$2,898	\$289	\$3,187	\$22,309
Combustion Eng.	15	2,947	289	3,236	48,540
GE Mark I	24	2,873	289	3,162	75,888
GE Mark II	8	2,873	289	3,162	25,296
GE Mark III	4	2,965	289	3,254	13,016
Westinghouse	<u>51</u>	2,906	289	3,195	<u>162,945</u>
Totals	109				\$347,994

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

(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: X

Research reactor	\$65,000
Test reactor	\$65,000

¹⁰/₆. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

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

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

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

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

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

Less than 20,000 \$400

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

(4) 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)

<u>Category of materials licenses</u>	<u>Annual Fees</u> ^{1, 2, 3}
---------------------------------------	---------------------------------------

1. Special nuclear material:

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

source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. \$14,400

Surcharge \$120

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.^{2/} \$26,400

Surcharge \$1,720

C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this

D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.

\$910

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

N/A^{2/}

X

Other Casks

N/A^{2/}

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

Users and Fabricators

\$67,400

Users

\$1,000

Surcharge	\$120
11. Standardized spent fuel facilities.	N/A ^{5/}
12. Special Projects	N/A ^{5/}
13. A. Spent fuel storage cask Certificate of Compliance.	N/A ^{5/}
B. General licenses for storage of spent fuel under 10 CFR 72.210.	\$

Surcharge	\$120
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation ¹ or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72.	N/A ^{2/}
15. Import and Export licenses	N/A ^{5/}
16. Reciprocity	N/A ^{5/}
17. Master materials licenses of broad scope issued to Government agencies.	\$358,400
Surcharge	\$23,700

X

18. DOE Certificates of Compliance \$1,013,000^{10/}

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 ^{when} ~~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 ^{when} ~~where~~ an amendment or revision is issued to increase or decrease the scope prior to October 1 of each fiscal year. X

Annual fees will be assessed based on whether a licensee holds a valid license with the NRC ^{that} ~~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 ⁶ ~~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. X

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. X

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.

2/ 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 ^{that} ~~who~~ also hold nuclear medicine licenses under Categories 7B or 7C. X

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

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

(e) A surcharge is proposed for each category ^{for} ~~which~~ for which a base annual fee is required. The surcharge consists of the following: X

(1) To recover costs relating to LLW disposal generic activities, an additional charge of \$100,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$1,600 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 \$23,700 has been added to fee Category 17.

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

11/8. In Section 171.19, paragraph^S_A (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. 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, ^{must} ~~shall~~ be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than \$100,000 ^{must} ~~shall~~ be paid once a year.

Dated at Rockville, Maryland this ____ day of _____, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

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

I. Background.

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

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

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

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

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

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

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

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

To comply with OBRA-90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) and FY 1992 (57 FR 32691; July 23, 1992) based on

- 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. x

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

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1993 costs (\$29.8 million of the total \$35.1 million) attributable to them. Therefore, the NRC is proposing to continue, for FY 1993, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800

for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

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

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA-90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small-entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower-tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of \$400 for the lower-tier small entities to ensure that the

lower-tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than \$250,000 or for governmental entities in jurisdictions with a population of less than 20,000. X

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 X
X
X

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

Wording for "Supplementary Information" Section

Insert at p. 35
Section 170.8 Information collection requirements: OMB approval.

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

Insert at p. 45
Section 171.8 Information collection requirements: OMB approval.

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

Insert at p. 80
g A new Section 170.8 is added ^{to read} as follows:
§ 170.8 Information collection requirements: OMB approval

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

Insert at p. 113
g A new Section 171.8 is added ^{to read} 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. 3501 et seq.).