AE 49-1
PDR 021

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

APR 15 1993

MEMORANDUM FOR: Michael Lesar, Acting Chief
Rules Review & Directives Branch
Division of Freedom of Information
and Publication Services, ADM

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

SUBJECT: NOTICE OF PROPOSED RULEMAKING -- 100% FEE RECOVERY FOR FY 1993 AND U.S. COURT OF APPEALS REMAND DECISION

Enclosed for your action are the following items relating to the publication of the proposed rule for a 30-day public comment period which was signed by the EDO on April 14, 1993. There are no changed pages to the proposed rule.

1. Original and twenty copies of Notice of Proposed Rulemaking - 10 CFR Parts 170 and 171.

2. Seven Congressional letters relating to the proposed rule.

3. Draft public announcement.

The proposed rule is consistent with previous Commission fee policy decisions and does not constitute a significant question of policy nor does it amend regulations contained in 10 CFR Parts 7, 8 or 9 Subpart C concerning matters of policy. Note that the proposed rule has been discussed with the Office of Enforcement. They agree that no changes to the Criminal Penalties or Enforcement Policy provisions need to be made at this time. Given the time urgency, the proposed rule should be published immediately. We are also enclosing for your files a copy of the "Approved for Publication" and "Daily Staff Notes to the Commission" which were sent to the EDO.

Thank you for your assistance in the matter.

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

Enclosures:
As stated

cc: Donnie H. Grimsley, ADM
Linda Schneider, ADM

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AE49

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

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

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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 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. (Telephone 301-504-1678).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC 20555, in the lower level of the Gelman Building.

The agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 are available in the Public Document Room at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman Building.

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

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. Public Law 101-576, the Chief Financial Officers Act of 1990 (CFO Act), enacted November 15, 1990, requires that the NRC perform a biennial review of its fees and other charges imposed by the agency and revise those charges to reflect costs incurred in providing those services.

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

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

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

receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

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

Section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees under Section 6101(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 for this action would allow for a 90-day public comment period.

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

On March 16, 1993, the U.S. Court of Appeals for the District of Columbia Circuit decided Allied-Signal, Inc. v. U.S. Nuclear Regulatory Commission and the United States of America, No. 91-1407 and Consolidated Cases. The court remanded for reconsideration two aspects of the NRC's FY 1991 annual fee rule, codified at 10 CFR Part 171. First, the court questioned the Commission's decision to exempt nonprofit educational institutions from Commission fees on the ground (in part) that they are unable to pass through the costs of those fees to their customers, without attempting a similar "passthrough" analysis for other licensees. Second, the court questioned the Commission's decision to allocate generic costs associated with low-level waste (LLW) disposal by classes of licensees, rather than by individual licensees.

The court did not vacate the FY 1991 rule, but returned it to the Commission for a better explanation or for appropriate changes in the rule. The Commission in this rulemaking seeks comments on its proposed response to the Court decision. The comments should address not only the "passthrough" and "LLW" aspects of the FY 1991 rule, but also the same aspects of the FY

1992 rule and the proposed FY 1993 rule.[1] The Commission will consider all "passthrough" and "LLW" comments together in connection with all three rules.[2] These issues are explored in more detail below.

Cost Passthrough

a. Court Decision. The court initially addressed the claim, advanced by Allied-Signal, Inc., that the Commission failed to consider the inability of uranium hexafluoride (UF6) converters to pass through the costs of their annual fees to their customers. Allied claimed that its competitive position was weak, that sales turned on as little as one cent per pound, and that NRC annual fees placed an intolerable burden on competitiveness, especially as foreign converters are not charged annual fees. Allied pointed to legislative history of the NRC fee statutes suggesting the Commission "take [passthrough] into account" when charging fees to, among others, uranium producers. The court rejected Allied's statutory argument. The court ruled that the legislative history did not mean that the Commission was

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[1]The Court remanded only the FY 1991 rule. But the FY 1992 rule and the proposed FY 1993 rule raise identical questions. The same petitioners who challenged the FY 1991 rule in court also brought a judicial challenge to the FY 1992 rule. The NRC expects the court to decide the FY 1992 challenge promptly, and in accord with the Court's decision in the FY 1991 rule.

[2]In a separate request for public comments, the NRC in April 1993 will also be publishing another Federal Register notice requesting public views on the overall administration of and policy underlying its annual fee rules pursuant to section 2903(c) of Public Law 102-486 (the Energy Policy Act of 1992).

barred from charging annual fees to licensees with an inability to pass through fees to customers through higher prices. Indeed, the court commented that "[b]ecause [price] elasticities are typically hard to discover with much confidence, the Commission's refusal to read the statute as a rigid mandate to do so is not only understandable but reasonable." Slip op. at 6-7.

The court found, however, that the Commission had not consistently declined to consider passthrough concerns. The court noted that the Commission chose to exempt nonprofit educational institutions on the ground (in part) of an inability to pass through costs to customers. Because the rule did not address why it was possible to calculate the effects of passthrough on educational institutions but not on UF6 converters like Allied, the court remanded that portion of the rule to the Commission to "develop a reasoned treatment" of passthrough-based claims. The court suggested that education alone, unhinged from a general "passthrough" rationale, might "yield exceptionally large externalized benefits that cannot be captured in tuition or other market prices." Slip op. at 8. The court also ordered the Commission to consider on remand a related claim of Combustion Engineering, Inc. ("CE"), that long-term fixed price contracts in its business (production of low enriched uranium) required a phase-in of passed-through costs.

Despite the remand, the court did not vacate the rule, both

because vacating the rule might lead to refunds that could not be recaptured "under a later-enacted rule," and because the court found a "serious possibility that the Commission will be able to substantiate its decision on remand." Slip op. at 8-9.

b. Proposed Resolution. In this remanded rulemaking, the Commission views two options as possible. The first is to take passthrough into account for those licensees for whom it can be done, as the court put it, "with reasonable accuracy and at reasonable cost." Slip op. at 7. The second is to abandon the passthrough concept and to determine, as the court suggested, whether an exemption for nonprofit educational institutions remains justifiable. For a number of reasons, including those stated in the court opinion, the Commission proposes to take the latter approach.

It is an impossible administrative task to assess the passthrough capability of the NRC's approximately 6,800 licensees. Each of these licensees operates in a specialized business environment, and must take many factors into account when making daily business decisions. The NRC is a regulatory agency with the responsibility of safeguarding the public health and safety with regard to peaceful uses of nuclear power. It is not a financial regulatory agency, and does not possess the knowledge or resources necessary to successfully and continuously

evaluate purely business factors. Such an effort would require the hiring of financial specialists and expanded training of existing employees to cope with these new tasks. This would in turn lead to diversion of the agency's budget from its mission responsibilities, and a possible increase in the NRC's budget (and therefore annual fees) to handle these new demands. An ironic result could be higher fees charged to licensees to pay for an expanded bureaucracy to determine if each licensee can pass on the cost of its fees. The Commission, for obvious reasons, does not see this as an optimum solution. The court itself viewed "the difficulty of assessing the ability . . . to pass through costs" as a "entirely legitimate concern." Slip op. at 6.

Passthrough also is an elusive inquiry as a matter of economics, requiring a sophisticated study of domestic and international markets. It depends, as the court pointed out, "on the price elasticities of supply and demand" -- "elasticities [that] are typically hard to discover with much confidence." Slip op. at 6-7. The Commission, therefore, feels that a general passthrough approach would fail the "reasonable accuracy and cost" test proposed by the court.

The Commission, in short, proposes to reject use of the passthrough concept in annual fee-setting. This means that the Commission does not intend to apply it to reduce Allied's fees,

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 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 31477; July 10, 1991. 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 "externalized 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 "externalized 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 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% of the NRC budget as required by OBRA-90. In addition, the LLW costs budgeted by NRC in FY 1991, FY 1992 and FY 1993 are not for the wastes being disposed during these years or prior years, but are devoted to creating the regulatory framework for disposal of LLW at some future date.[4] In fact,

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

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

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

Given the 100 percent budget recovery requirement of OBRA-90, and the fact that there are no NRC LLW licensees from whom to recover FY 1991-1993 budgeted costs for NRC generic activities, the basic question is how should NRC allocate these costs. Congress spoke briefly to this issue in developing OBRA-90 by recognizing that certain expenses cannot be attributed directly either to an individual licensee or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge, even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. 1356 Cong Rec. at H12692, 3.

Consistent with the Congressional guidance, the Commission concluded that all classes of NRC licensees which generate a substantial amount of LLW should be assessed annual fees to cover the agency's generic LLW costs. 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 context, and given the court opinion, the Commission is considering the following four 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.

(2) Allocate the LLW budgeted cost based on the amount of LLW disposed of by groups of licensees and assess each licensee in a group the same annual fee as was done in the FY 1991 and FY 1992 rules.

(3) Assess each licensee an annual fee based on the amount of waste generated/disposed by the individual licensee, as was suggested by Allied-Signal and by the court.

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

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, who would pay the same LLW annual fee as a fuel facility. If this alternative were used, the uniform LLW annual fee assessed to licensees in categories that generate low-level waste would be $7,200 for FY 1991, $7,900 for FY 1992, and $7,900 for FY 1993. 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.

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 classes 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 do from NRC regulatory costs 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.

Alternative 4 would base LLW annual fees on the amount of LLW curies generated or disposed of. Adoption of this alternative, would imply that the number of curies generated or disposed of is a better indicator of future benefits from NRC's LLW program than the volume of LLW generated or disposed of as discussed in alternatives 2 and 3.

On balance, while the NRC recognizes that there are many conceivable ways to allocate its low-level waste costs, it does not believe that Alternatives 1 and 3 provide a major or workable improvement on the current system. However, the Commission is requesting comments on each method (and variations) prior to issuing the final rule. The Commission notes that for FY 1993, it is making a minor improvement to its allocation by adjusting the percentage of use in the allocation to better reflect the impact of waste generated by licensees in Agreement States.

In sum, the approach taken in the provisions of the proposed regulations that address nonprofit educational institutions and LLW disposal would apply to the FY 1993 fee schedule and also respond to the court's remand.

III. Proposed Action

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

For FY 1993, the NRC's budget authority is $540.0 million, of which approximately $21.1 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately $518.9 million in FY 1993 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The NRC estimates that approximately $ 116.6 million will be recovered in FY 1993 from the fees assessed under 10 CFR Part 170. The remaining $402.3 million would be recovered through the FY 1993 10 CFR Part 171 annual fees.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees set forth

in the final rules published July 10, 1991 (56 FR 31472) and July 23, 1992 (57 FR 32691). With respect to the FY 1993 fees, the NRC is requesting public comment on the issue of whether the methodology adopted in FY 1991 and FY 1992 has been properly applied to the FY 1993 budget authority.

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

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

(2) The number of licenses in some classes have decreased due to license termination or consolidation resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170.

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

publication of the final rule. Payment is due on the effective date of the FY 1993 rule which is estimated to be August 1, 1993.

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

The NRC proposes five amendments to Part 170. These amendments do not change the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

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

Second, the NRC proposes that the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants

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

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

In the materials inspection area, the historical data for the average number of professional staff hours necessary to

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

Fifth, a new section, 170.8 is being added to comply with Office of Management and Budget (OMB) regulations that require

agencies to give public notice, or a negative declaration, of the presence of information collection requirements contained in Federal regulations.

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

The NRC proposes six amendments to 10 CFR Part 171. First, NRC proposes to amend §§ 171.15, and 171.16 to revise the annual fees for FY 1993 to recover approximately 100 percent of the FY 1993 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Second, the NRC proposes to amend § 171.11 by revising paragraphs (a), (b), and (d). 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) The reactor is used primarily for educational training and academic research purposes and;

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

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

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 1, of 10 CFR 171.16 provides that the annual fee

is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the Commission, for FY 1993, is 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 11.e.(2) of the Atomic Energy Act for possession and disposal. Section 11.e.(2) byproduct material is the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Fifth, additional language is 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.

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

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

The 10 CFR Part 171 annual fees have been determined using the same method used to determine the FY 1991 and FY 1992 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the increased professional hourly rate. The proposed amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that

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

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

that the annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC is 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

Recovery Method	Estimated Amount ($ in Millions)
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	35.1[1/]
Subtotal	$372.1
Costs remaining to be recovered not identified	30.1

above	
Total	$540.0

[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 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, UF_6 and 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 and $3.3 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

The proposed additional charges not directly or solely attributable to a specific class of NRC licensees 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 Information collection requirements: OMB approval.

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

Section 170.20 Average cost per professional staff hour.

This section is amended to reflect an agency-wide

professional staff-hour rate based on FY 1993 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1993 for all fee categories that are based on full cost is $132 per hour, or $229,912 per direct FTE. The rate is based on the FY 1993 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991 and FY 1992. The method is as follows:

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

Table II

Allocation of Direct FTEs

by Major Program

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

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

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

(a) Salaries and benefits.

(b) Administrative support.

(c) Travel.

(d) Program support.

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

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

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

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

Salaries and benefits	$254.1
Administrative support	83.8
Travel	14.1
Total nonprogram support obligations	$352.0
Program support	166.9
Total Budget Authority	$518.9
Less direct program support and offsetting receipts	146.6
Budget Allocated to Direct FTE	$372.3
Professional Hourly Rate	$132/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 which are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

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

The licensing and inspection fees in this section would be 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 conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged nuclear materials 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) 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 insure public health and safety. The average number of hours for materials licensing actions (new licenses, renewals and amendments) have not changed significantly for most categories. For new license applications, approximately 60 percent of the materials license population 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) broad scope processing or manufacturing of items for commercial distribution (fee category 3A); 2) broad scope research and development (fee category 3L); and 3) broad scope medical programs (fee category 7B). Over 50 percent of the licenses would have increases of more than 50 percent. The primary reason for these relatively large increases is that the average number of hours on which inspection fees are based has not been updated since 1984 (49 FR 21293; May 21, 1984). As a result, the average number of professional hours used in the current fee schedule for inspections is outdated. During the past eight years, the NRC's inspection program has changed significantly. In some program areas, for example, NRC

management guidance in recent years has emphasized that, based on historical enforcement actions, inspections be more thorough and in-depth so as to improve public health and safety.

The review of the inspection information also indicates that over 90 percent of the inspections conducted are routine inspections. As a result, for most fee categories either no nonroutine inspections were conducted or a very small number of nonroutine inspections were completed. 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.

Part 171

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.

Section 171.11 Exemptions.

Paragraph (a) of this section is revised and renumbered as (a)(1). A new paragraph (a)(2) is added which incorporates the specific statutory exemption provided in the Energy Policy Act of 1992 for certain nonpower (research) reactors and paragraphs (b) and (d), the exemption section for materials licensees, have been revised. Section 2903(a)(4) of the Energy Policy Act amends Section 6101(c) of OBRA-90 to specifically exempt from 10 CFR Part 171 annual fees certain Federally owned research reactors if--

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

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

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

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

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

(B) A liquid fuel loading; or

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

The NRC, in implementing this provision of the Energy Policy Act, 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.

Earlier in this notice, the NRC discussed its proposal to continue exempting nonprofit educational institutions from annual fees for FY 1993.

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 within 90 days from the date of the invoice.

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

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

The NRC notes that Section 2903(c) of the Energy Policy Act requires the NRC to review its policy for assessment of annual fees, under Section 6101(c) of OBRA-90, solicit comment on the need for changes to this policy, and recommend changes in

existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees, particularly those who hold licenses to operate Federally owned research reactors used primarily for educational training and academic research purposes. The NRC 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 it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1992. Footnote 1 of 10 CFR 171.16 provides that the annual fee is waived where a license is terminated prior to October 1 of each fiscal year. However, based on the number of requests filed, the NRC is 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.

Section 171.15 Annual Fee: Reactor operating licenses.

The annual fees in this section would be revised to reflect the FY 1993 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) would be revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1993. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1993 programs and program elements. The resulting total base annual fee amount for power reactors is also shown. On the average, the power reactor base annual fees for FY 1993 have increased approximately 2.2 percent above the FY 1992 annual fees.

Table IV

ALLOCATION OF NRC FY 1993 BUDGET TO POWER REACTORS BASE FEES[1/]

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

Table IV
(Continued)

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

Table IV
(Continued)

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

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	$416.4 million[2/]
LESS ESTIMATED PART 170 POWER REACTOR FEES	$100.0 million
PART 171 BASE FEES FOR OPERATING POWER REACTORS	$316.4 million

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

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

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

TABLE V
BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment Type	Annual Fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry	$2,906,000
	Containment	2,906,000
2. Beaver Valley 2	" "	2,906,000
3. Braidwood 1	" "	2,906,000
4. Braidwood 2	" "	2,906,000
5. Byron 1	" "	2,906,000
6. Bryon 2	" "	2,906,000
7. Callaway 1	" "	2,906,000
8. Comanche Peak 1	" "	2,906,000
9. Diablo Canyon 1	" "	2,903,000
10. Diablo Canyon 2	" "	2,903,000
11. Farley 1	" "	2,906,000
12. Farley 2	" "	2,906,000
13. Ginna	" "	2,906,000
14. Haddam Neck	" "	2,906,000
15. Harris 1	" "	2,906,000
16. Indian Point 2	" "	2,906,000
17. Indian Point 3	" "	2,906,000
18. Kewaunee	" "	2,906,000
19. Millstone 3	" "	2,906,000

20.	North Anna 1	"	"	$2,906,000
21.	North Anna 2	"	"	2.906,000
22.	Point Beach 1	"	"	2,906,000
23.	Point Beach 2	"	"	2,906,000
24.	Prairie Island 1	"	"	2,906,000
25.	Prairie Island 2	"	"	2,906,000
26.	Robinson 2	"	"	2,906,000
27.	Salem 1	"	"	2,906,000
28.	Salem 2	"	"	2,906,000
29.	San Onofre 1	"	"	2,903,000
30.	Seabrook 1	"	"	2,906,000
31.	South Texas 1	"	"	2,906,000
32.	South Texas 2	"	"	2,906,000
33.	Summer 1	"	"	2,906,000
34.	Surry 1	"	"	2,906,000
35.	Surry 2	"	"	2,906,000
36.	Trojan	"	"	2,903,000
37.	Turkey Point 3	"	"	2,906,000
38.	Turkey Point 4	"	"	2,906,000
39.	Vogtle 1	"	"	2,906,000
40.	Vogtle 2	"	"	2,906,000
41.	Wolf Creek 1	"	"	2,906,000
42.	Zion 1	"	"	2,906,000
43.	Zion 2	"	"	2,906,000
44.	Catawba 1	PWR -- Ice Condenser		2,898,000
45.	Catawba 2	"	"	2,898,000

46.	Cook 1	"	"	$2,898,000
47.	Cook 2	"	"	2,898,000
48.	McGuire 1	"	"	2,898,000
49.	McGuire 2	"	"	2,898,000
50.	Sequoyah 1	"	"	2,898,000
51.	Sequoyah 2	"	"	2,898,000

Combustion Engineering:

1.	Arkansas 2	PWR	Large Dry	Containment $2,947,000
2.	Calvert Cliffs 1	"	"	2,947,000
3.	Calvert Cliffs 2	"	"	2,947,000
4.	Ft. Calhoun 1	"	"	2,947,000
5.	Maine Yankee	"	"	2,947,000
6.	Millstone 2	"	"	2,947,000
7.	Palisades	"	"	2,947,000
8.	Palo Verde 1	"	"	2,943,000
9.	Palo Verde 2	"	"	2,943,000
10.	Palo Verde 3	"	"	2,943,000
11.	San Onofre 2	"	"	2,943,000
12.	San Onofre 3	"	"	2,943,000
13.	St. Lucie 1	"	"	2,947,000
14.	St. Lucie 2	"	"	2,947,000
15.	Waterford 3	"	"	2,947,000

Babcock & Wilcox:

1.	Arkansas 1	"	"	$2,898,000

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

19.	Limerick 1	" "	$2,873,000
20.	Limerick 2	" "	2,873,000
21.	Millstone 1	Mark I	2,873,000
22.	Monticello	" "	2,873,000
23.	Nine Mile Point 1	" "	2,873,000
24.	Nine Mile Point 2	Mark II	2,873,000
25.	Oyster Creek	Mark I	2,873,000
26.	Peach Bottom 2	" "	2,873,000
27.	Peach Bottom 3	" "	2,873,000
28.	Perry 1	Mark III	2,965,000
29.	Pilgrim	Mark I	2,873,000
30.	Quad Cities 1	" "	2,873,000
31.	Quad Cities 2	" "	2,873,000
32.	River Bend 1	Mark III	2,965,000
33.	Susquehanna 1	Mark II	2,873,000
34.	Susquehanna 2	" "	2,873,000
35.	Vermont Yankee	Mark I	2,873,000
36.	Washington Nuclear 2	Mark II	2,873,000

Other Reactors:

1.	Big Rock Point	GE Dry Containment	2,873,000
2.	Three Mile Island 2	B&W PWR-Dry Containment	2,898,000

The "Other Reactors" listed in Table V have not been included in the fee base because historically they have been granted either full or partial exemptions from the annual fees. The NRC proposes to grant a partial exemption in FY 1993 to Big

Rock Point, a smaller older reactor, and grant a full exemption for Three Mile Island 2 because the authority to operate TMI-2 was revoked in 1979.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1992 to FY 1993. Paragraph (c)(2) would be amended to show the amount of the surcharge for FY 1993, which will be added to the base annual fee for each operating power reactor shown in Table V. This surcharge would recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of OBRA-90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1993 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of Costs	FY 1993 Budgeted Costs ($ In Millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions;	$5.2
b. international cooperative safety program and international safeguards activities; and	8.4
c. 67% of low level waste disposal generic activities;	6.3
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.	4.5
Total Budgeted Costs	$31.5

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$31.5 \text{ million}}{109} = \$289{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,906,000 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 research reactor.

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

Paragraph (d) 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,

holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

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

Table VI

ALLOCATION OF NRC FY 1993 BUDGET TO FUEL FACILITY BASE FEES[1/]

	Total Program Element		Allocated to Fuel Facility	
	Program Support $,K	FTE	Program Support $,K	FTE
NMLL (RESEARCH)	$1,640	5.3	$350	1.1
Radiation Protection/Health Effects				
Environmental Policy and Decommissioning	1,925	9.0	100	.4
NMLL (RES) PROGRAM TOTAL			$450	1.5
NMLL (NMSS)				
Fuel Facilities Lic./Inspections	$4,800	157.9	1,510	39.4
Event Evaluation	---	15.3	---	3.8
Safeguards Licensing/Inspection	440	19.4	440	17.3
Threat and Event Assessment	1,600	12.7	123	1.5
Decommissioning	1,050	21.8	190	5.1
Uranium Recovery (DAM SAFETY)	350	9.7	6	---
NMLL (NMSS) PROGRAM TOTAL			$2,269	67.1
NMLL (MSIRIE)				
Incident Response	---	3.0	---	1.0
TOTAL NMLL			$2719	69.6
TOTAL BASE FEE AMOUNT ALLOCATED TO FUEL FACILITIES			$18.7 million[2/]	
LESS PART 170 FUEL FACILITY FEES			4.3 million	
PART 171 BASE FEES FOR FUEL FACILITIES			$14.4 million	

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

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

Table VII

ALLOCATION OF FY 1993 BUDGET TO MATERIAL USERS BASE FEES[1/]

	Total		Allocated to Materials Users	
	Program Support $,K	FTE	Program Support $,K	FTE
NMLL (RESEARCH)				
Materials Licensee Performance	$550	.4	$495	.4
Materials Regulatory Standards	1,000	12.1	854	10.3
Radiation Protection/Health Effects	1,640	5.3	1,161	3.8
Environmental Policy and Decommissioning	1,925	9.0	900	4.3
TOTAL NMLL (RES)			$3,410	18.8
NMLL (NMSS)				
Licensing/Inspection of Materials Users	$2,300	92.6	2,070	93.3
Event Evaluation	---	15.3	---	11.9
Threat and Event Assessment	1,600	12.7	89	---
Decommissioning	1,050	21.8	684	16.6
Low level waste - on site disposal	850	17.0	225	1.9
TOTAL NMLL (NMSS)			$3,068	123.7
NMLL (MSIRIE)				
Analysis and Evaluation of Operational Data	256	8.0	113	4.5
TOTAL NMLL Program			$6,591	147.0
BASE AMOUNT ALLOCATED TO MATERIALS USERS ($,M)			$40.4 million[2/]	
LESS PART 170 MATERIAL USERS FEES			$5.3 million	
PART 171 BASE FEES FOR MATERIAL USERS			$35.1 million	

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

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

The allocation of the NRC's $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.

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

UF_6 Conversion	Safeguards and Safety
Allied Signal Corp.	$662,000
Sequoyah Fuels Corp.	662,000
Subtotal	$1,324,000
Other fuel facilities (5 facilities at $122,000 each)	$610,000
Total	$14,421,000

One of the Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, that directed the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC proposes to grant an exemption for one of CE's low enriched uranium fuel facilities for FY 1992 and FY 1993. The NRC will therefore calculate its FY 1993 annual fees for the low enriched fuel category by dividing its budgeted costs among five licenses rather than six licenses as done previously.

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 50 percent of the $465,000 for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 27 percent of the $465,000 for uranium recovery is attributable to those

solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 23 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

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

For spent fuel storage licenses, the generic costs of $733,000 have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $146,600.

To equitably and fairly allocate the $35.1 million attributable to the approximately 6,800 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of

licenses is developed as follows:

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

The constant is the multiple necessary to recover $35.1 million and is 2.3 for FY 1993. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1993, unique costs of approximately $1.9 million were identified for the medical improvement program which is attributable to medical licensees; about $115,000 in costs were identified as being attributable to radiography licensees; and about $115,000 was identified as being attributable to irradiator licensees. The changes to materials annual fees for FY 1993 varies compared to the FY 1992 annual fees. Some of the annual fees decrease while other annual fees increase. There are three reasons for the changes in the fees compared to FY 1992. First, the FY 1993 budgeted amount attributable to materials licensees is about 12 percent higher than the FY 1992 amount. Second, the number of licensees to be assessed annual fees in FY 1993 has decreased about 4 percent below the FY 1992 levels (from about 7,100 to about 6,800). Third, the changes in the 10 CFR Part 170 license application and inspection fees cause a redistribution of the costs on which the annual fees are based, since these Part 170 fees are used as a proxy to determine the annual fees. The materials fees must be established at the proposed levels in order to comply with the mandate of OBRA-90 to recover approximately 100 percent of the NRC's FY 1993 budget

authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity on NRC Form 526.

To recover the $4.4 million attributable to the transportation class of licensees, about $1.0 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.4 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $67,400 for users and fabricators and $1,000 for users only.

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

Materials Licenses
Base Annual Fee Ranges

Category of License	Annual Fees
Part 70 - High enriched fuel	$3.2 million
Part 70 - Low enriched fuel	$1.2 million
Part 40 - UF_6 conversion	$0.6 million
Part 40 - Uranium recovery	$21,100 to 58,100
Part 30 - Byproduct Material	$680 to $26,400[1/]
Part 71 - Transporta-	

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.

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 change is based on the NRC's recognition of potential increased activity related to disposal of 11.e.(2) byproduct material and to better distinguish this unique category of license.

Paragraph (e) would be amended to establish the additional charge which is to be added to the base annual fees shown in paragraph (d) of this proposed rule. The alternatives 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). 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:

	Category of Costs	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, UF_6 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 license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,600 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.

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 annual fee of $3,196,000 and an additional charge of $289,000 for LLW activities and small entity costs. A medical center with a broad-scope program would pay a base annual fee of $26,400 and an additional charge of $1,720, for a total annual fee of $28,120 for FY 1993.

Section 171.19 Payment.

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

The NRC notes that many licensees have indicated during the past two years that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In particular, this issue has been raised by certain uranium mill licensees who have mills not currently in operation. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a

licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fees will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC is proposing minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7.

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices

Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of National Cable Television Association, Inc. v. United States, 415 U.S. 36 (1974) and Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

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

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

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

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

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). 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 among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1993. The proposed rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and

approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

IX. Backfit Analysis

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

List of Subjects

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

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

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

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

1. The authority citation for Part 170 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, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 902).

2. 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.*).

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

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

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

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

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

Schedule of Facility Fees

(see footnotes at end of table)

Facility Categories and Type of Fees	Fees[1/ 2/]

*****

K. Import and export licenses:

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

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

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

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

Application-new license $5,300

Amendment $5,300

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

Application-new license $3,300

Amendment $3,300

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

Application-new license $1,300

Amendment $1,300

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

Amendment $130

[1/] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of such Commission orders.

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

[2/] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20,

1984, January 30, 1989, July 2, 1990, 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.

*****

5. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses, import and export

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

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees[1/]	Fee[2/, 3/]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost
Inspections	Full Cost
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost
Inspections	Full Cost

C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4/]

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

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4/]

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

E. Licenses for construction and operation of a uranium enrichment facility.

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

2. Source material:

A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

License, Renewal, Amendment	Full Cost
Inspections	Full Cost

B. Licenses for possession and use of source material for shielding:

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

C. All other source material licenses:

Application - New license	$2,500
Renewal	$1,300
Amendment	$450
Inspections	$2,500

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	$2,600
Renewal	$1,700
Amendment	$460
Inspections	$9,700[5/]

B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this

chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application - New license	$1,200
Renewal	$2,200
Amendment	$600
Inspections	$3,000[3/]

C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New license	$3,500
Renewal	$3,000
Amendment	$490
Inspections	$3,300

D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct

material:

Application - New license	$1,300
Renewal	$540
Amendment	$370
Inspections	$3,000

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New license	$920
Renewal	$750
Amendment	$330
Inspections	$1,200

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

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

Inspections	$1,300

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application - New license	$5,200
Renewal	$4,700
Amendment	$630
Inspections	$4,100

H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	$2,400
Renewal	$2,300
Amendment	$800

Inspections	$1,100

I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application - New license	$4,600
Renewal	$2,600
Amendment	$1,100
Inspections	$1,000

J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	$2,100

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

K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New license	$1,900
Renewal	$1,400
Amendment	$260
Inspections	$1,000

L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:

Application - New license	$4,100
Renewal	$2,200
Amendment	$620
Inspections	$4,700

M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:

Application - New license	$1,400
Renewal	$1,500
Amendment	$690
Inspections	$2,200

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

Application - New license	$1,700
Renewal	$2,000
Amendment	$670
Inspections	$2,400

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:

Application - New license	$3,800
Renewal	$2,800

Amendment $690

Inspections . . . . . $3,500[5/]

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

Application - New license $570

Renewal $670

Amendment $360

Inspections $1,500

4. Waste disposal and processing:

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

License, renewal, amendment . . . Full Cost

Inspections . . . . . Full Cost

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

Application - New license	$3,900
Renewal	$2,100
Amendment	$420
Inspections	$2,300

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

Application - New license	$1,500
Renewal	$1,100
Amendment	$250
Inspections	$2,800

D. Licenses specifically authorizing the receipt from other persons of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for

possession and disposal.

License, renewal, amendment . . . . Full Cost

Inspections . . . . . Full Cost

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application - New license $3,700

Renewal $3,900

Amendment $650

Inspections $3,600

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

License, renewal, amendment . . . Full Cost

Inspections $1,300

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:

Application - New license	$4,500
Renewal	$2,900
Amendment	$700
Inspections	$4,500

7. Human use of byproduct, source, or special nuclear material:

A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license	$3,700
Renewal	$1,200
Amendment	$550
Inspections	$2,200

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license	$2,600
Renewal	$3,500

Amendment $500

Inspections $8,600

C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New license $1,100

Renewal $1,400

Amendment $500

Inspections $2,100

8. Civil defense:

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

Application - New license $660

Renewal $700

Amendment $480

Inspections $1,000

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

A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

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

B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:

Application - each device	$1,800
Amendment - each device	$660
Inspections	Full Cost

C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application - each source	$790
Amendment - each source	$260
Inspections	Full Cost

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

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

10. Transportation of radioactive material:

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

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

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

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

11. Review of standardized spent fuel facilities:

Approval, Renewal, Amendment . . Full Cost

Inspections . . . . . Full Cost

12. Special projects:

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

Inspections . . . . . Full Cost

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

Approvals . . . . . Full Cost

Amendments, revisions, and
supplements . . . . . Full Cost

Reapproval . . . . . Full Cost

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

C. Inspections related to storage of spent fuel under § 72.210 of this chapter . . . . Full Cost

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72 of this chapter:

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

15. Import and Export licenses:

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

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

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

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

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

C. Application for export of routine reloads of LEU

reactor fuel and exports of source material requiring foreign government assurances only.

Application-new license $3,300

Amendment $3,300

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

Application-new license $1,300

Amendment $1,300

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

Amendment $130

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.

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

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

(d) Amendment fees -

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

upon notification by the Commission in accordance with § 170.12(c).

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

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

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

(e) Inspection fees - Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if

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

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

[3/]Full cost fees will be determined based on the professional staff time and appropriate contractual support

services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, 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.

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

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

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

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

6. The authority citation for Part 171 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 as follows:

§ 171.8 Information collection requirements: OMB approval

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

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 purposes of this exemption, the term research reactor means a nuclear reactor that--

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

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

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

(B) A liquid fuel loading; or

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

(b) The Commission may, upon application by an interested

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

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

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly

disproportionate allocation of costs to the licensee, or class of licensees; or

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

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

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 Category[1]

(Fees in Thousands)

Reactor Vendor	Number	Base Fee	Added Charge	Total Fee	Estimated Collections
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	51	2,906	289	3,195	162,945
Totals	109				$347,994

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

(e) The annual fees for licensees authorized to operate a

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

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

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10. 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.

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

Small Businesses and Small Not-For-Profit Organizations (Gross Annual Receipts)	Maximum Annual Fee Per Licensed Category
$250,000 to $3.5 million	$1,800

Less than $250,000	$400
Private Practice Physicians (Gross Annual Receipts)	
$250,000 to $1.0 million	$1,800
Less than $250,000	$400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)	
20,000 to 50,000	$1,800
Less than 20,000	$400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less.	$1,800

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

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

SCHEDULE OF MATERIALS ANNUAL FEES

AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

(See footnotes at end of table)

Category of materials licenses			Annual Fees[1, 2, 3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.			
High Enriched Fuel	License No.	Docket No.	
Babcock and Wilcox	SNM-42	70-27	$3,196,000
Nuclear Fuel Services	SNM-124	70-143	3,196,000
Low Enriched Fuel			
B&W Fuel Company	SNM-1168	70-1201	1,219,000
Combustion Engineering (Hematite)	SNM-33	70-36	1,219,000
General Electric Company	SNM-1097	70-1113	1,219,000
Siemens Nuclear Power	SNM-1227	70-1257	1,219,000
Westinghouse Electric Co.	SNM-1107	70-1151	1,219,000
		Surcharge	$100,000
A.(2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form.			$122,000
		Surcharge	$100,000

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

Surcharge $120

C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. $1,600

Surcharge $120

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2). $1,800

Surcharge $1,720

E. Licenses for the operation of a

uranium enrichment facility. $ N/A[11/]

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride. $662,000

Surcharge $100,000

(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.

Class I facilities[4] $58,100

Class II facilities[4] $25,400

Other facilities $21,100

Surcharge $120

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

Surcharge $120

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

Surcharge $1,720

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. $17,000

Surcharge $1,720

B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. $5,000

Surcharge $1,720

C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. $10,500

Surcharge $1,720

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

maceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. $5,200

Surcharge $120

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). $3,700

Surcharge $120

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. $4,700

Surcharge $120

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. $21,900

Surcharge $120

H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. $6,000

Surcharge $120

I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter. $10,900

Surcharge $120

J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. $5,800

Surcharge $120

K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter. $5,100

Surcharge $120

L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Part 30 and 33 of this chapter for research and development that do not authorize commercial distribution. $12,900

Surcharge $1,720

M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize

commercial distribution. $4,400

Surcharge $1,720

N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D. $5,200

Surcharge $1,720

O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license. $17,200

Surcharge $120

P. All other specific byproduct material

licenses, except those in Categories 4A through 9D. $2,000

Surcharge $120

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. $113,400[5/]

Surcharge $1,720

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. $14,100

Surcharge $1,720

C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. $6,600

Surcharge $1,720

D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal. $7,600

Surcharge $1,720

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. $11,100

Surcharge $120

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

Surcharge $1,720

6. Nuclear laundries:

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

Surcharge $1,720

7. Human use of byproduct, source, or special nuclear material.

A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. $14,400

Surcharge $120

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding

when authorized on the same license.[9/]	$26,400
Surcharge	$1,720

C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9/] $5,000

Surcharge $120

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. $1,800

Surcharge $120

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

A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. $8,400

Surcharge $120

B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices. $4,100

Surcharge $120

C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source

material, or special nuclear material, except reactor fuel, for commercial distribution. $1,800

Surcharge $120

D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. $910

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[6/]

Other Casks N/A[6/]

	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[6/]
13.	A. Spent fuel storage cask Certificate of Compliance.	N/A[6/]
	B. General licenses for storage of spent fuel under 10 CFR 72.210.	$146,600
	Surcharge	$120
14.	Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72.	N/A[7/]
15.	Import and Export licenses	N/A[8/]

16.	Reciprocity	N/A[8/]
17.	Master materials licenses of broad scope issued to Government agencies.	$358,400
	Surcharge	$23,820
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 where the license is terminated prior to October 1 of each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to October 1 of each fiscal year.

Annual fees will be assessed based on whether a licensee holds a valid license with the NRC which authorizes possession and use of radioactive material. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration or approval held by that person. For those licenses that authorize more than one activity on a single license (e.g.,

human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

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

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

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

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

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

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

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

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

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

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

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

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $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.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. In Section 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

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(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, 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 shall be paid once a year.

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

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

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(c) For FYs 1993 through 1995, annual fees in the amount of $100,000 or more and described in the Federal Register Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. 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 shall be paid once a year.

Dated at Rockville, Maryland this 14th day of April, 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

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

II. Impact on small entities.

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

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

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

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

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

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

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

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

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts

for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

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

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

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

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

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

The NRC established, and is 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 a substantial number of small entities and that the maximum small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

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

III. Summary.

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

this 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.

publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For Fys 1993 through 1995, annual fees in the amount of $100,000 or more and described in the Federal Register Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. 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 shall be paid once a year.

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

For the Nuclear Regulatory Commission.

Original signed by
James M. Taylor

James M. Taylor,
Executive Director for Operations.

DISTRIBUTION: OC R/F, OC S/F, EDO R/F, JHolloway, JFunches, RMScroggins, TRothschild, MRafky, PGNorry, MLesar

*See attached concurrence

OFFICE:	OC	OGC*	ADM*	OC
NAME:	JHolloway	TRothschild	PGNorry	JFunches
DATE:	4/ /93	4/ /93	4/ /93	4/ /93

OFFICE:	EDO			
NAME:	JMTaylor			
DATE:	4/ /93			

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publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1993 through 1995, annual fees in the amount of $100,000 or more and described in the Federal Register Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. 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 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.

DISTRIBUTION: OC R/F, OC S/F, EDO R/F, JHolloway, JFunches, RMScroggins, TRothschild, MRafky, PGNorry, MLesar

*See attached concurrence

OFFICE:	OC	OGC*	ADM*	OC
NAME:	JHolloway	TRothschild	PGNorry	JFunches
DATE:	4/7/93	4/6/93	4/7/93	4/7/93

OFFICE:	OC	EDO		
NAME:	RMScroggins	JTaylor		
DATE:	4/7/93	4/ /93		

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

APR - 7 1993

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

DISTRIBUTION: OC R/F, OC S/F, DRathbun, EDO R/F, JHolloway, JFunches, RScroggins, LHiller, DDandois, GJackson, DWeiss

OFFICE:	OC	OC
NAME:	JHolloway	JFunches
DATE:	04/5/93	04/6/93
REQUEST COPY:	YES/NO	YES/NO

OFFICE:	OGC	ADM
NAME:	T.ROTHCHILD w/R for TBR	P.NORRY
DATE:	04/6/93	04/ /93
REQUEST COPY:	YES/NO	YES/NO

OFFICE:	OC	EDO
NAME:	R.SCROGGINS	J.TAYLOR
DATE:	04/ /92	
REQUEST COPY:	YES/NO	

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

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

Dear Mr. Chairman:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. For FY 1993, the NRC must collect approximately $518.9 million through these fees as compared to $492.5 million for FY 1992.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to the Commission's fee regulations would revise the fees currently charged to individuals and companies licensed by the NRC.

The proposed amendments to 10 CFR Part 170, which assess license and inspection fees for specific identifiable services would: (1) increase the cost per professional staff-hour for all full cost fees; and (2) revise all flat fees for radioisotope programs to reflect the increased cost per professional staff hour and the current estimate of the average hours required to process licensing actions or to conduct inspections.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1993 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1993 annual fees would be increased as compared to FY 1992. However, those NRC licensees that can qualify as a small entity under the NRC's size standards would be eligible to pay reduced annual fees. For example, a licensee with gross annual receipts of $250,000 to $3.5 million would pay a maximum annual fee of $1,800. Those licensees with gross annual receipts of less than $250,000 would pay an annual fee of $400.

The proposed rule also requests public comments on the March 16, 1993, U.S. Court of Appeals of the District of Columbia remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Senator Alan K. Simpson

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Senator Alan K. Simpson

DISTRIBUTION: OC R/F, OC S/F, DRathbun, EDO R/F, JHolloway, JFunches, RScroggins, LHiller, DDandois, GJackson, DWeiss

OFFICE:	OC	OC
NAME:	JHolloway	JFunches
DATE:	04/15/93	04/ /93
REQUEST COPY:	YES/NO	YES/NO
OFFICE:	OC	EDO
NAME:	RMScroggins	JMTaylor
DATE:	04/13/93	04/ /93
REQUEST COPY:	YES/NO	YES/NO
OFFICE:	OCA	
NAME:	DKRathbun	
DATE:	04/ /92	
REQUEST COPY:	YES/NO	

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IDENTICAL LETTERS SENT TO:

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

cc: Representative Michael Bilirakis

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

cc: Representative Barbara Vucanovich

The Honorable J. Bennett Johnston, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

cc: Senator Mark O. Hatfield

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

cc: Representative John T. Myers

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

cc: Representative John R. Kasich

The Honorable Jim Sasser, Chairman
Committee on Budget
United States Senate
Washington, D.C. 20510

cc: Senator Pete V. Domenici

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

The Honorable Jim Sasser, Chairman
Committee on Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. For FY 1993, the NRC must collect approximately $518.9 million through these fees as compared to $492.5 million for FY 1992.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to the Commission's fee regulations would revise the fees currently charged to individuals and companies licensed by the NRC.

The proposed amendments to 10 CFR Part 170, which assess license and inspection fees for specific identifiable services would: (1) increase the cost per professional staff-hour for all full cost fees; and (2) revise all flat fees for radioisotope programs to reflect the increased cost per professional staff hour and the current estimate of the average hours required to process licensing actions or to conduct inspections.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1993 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1993 annual fees would be increased as compared to FY 1992. However, those NRC licensees that can qualify as a small entity under the NRC's size standards would be eligible to pay reduced annual fees. For example, a licensee with gross annual receipts of $250,000 to $3.5 million would pay a maximum annual fee of $1,800. Those licensees with gross annual receipts of less than $250,000 would pay an annual fee of $400.

The proposed rule also requests public comments on the March 16, 1993, U.S. Court of Appeals of the District of Columbia remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Senator Pete V. Domenici

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

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

Dear Mr. Chairman:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. For FY 1993, the NRC must collect approximately $518.9 million through these fees as compared to $492.5 million for FY 1992.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to the Commission's fee regulations would revise the fees currently charged to individuals and companies licensed by the NRC.

The proposed amendments to 10 CFR Part 170, which assess license and inspection fees for specific identifiable services would: (1) increase the cost per professional staff-hour for all full cost fees; and (2) revise all flat fees for radioisotope programs to reflect the increased cost per professional staff hour and the current estimate of the average hours required to process licensing actions or to conduct inspections.

The proposed amendments to 10 CFR Part 171, which assess annual fees for costs not recovered through 10 CFR Part 170, would establish the amount of the FY 1993 annual fees to be assessed to operating reactors, fuel cycle licensees, transportation certificate holders, and materials licensees. Most of the FY 1993 annual fees would be increased as compared to FY 1992. However, those NRC licensees that can qualify as a small entity under the NRC's size standards would be eligible to pay reduced annual fees. For example, a licensee with gross annual receipts of $250,000 to $3.5 million would pay a maximum annual fee of $1,800. Those licensees with gross annual receipts of less than $250,000 would pay an annual fee of $400.

The proposed rule also requests public comments on the March 16, 1993, U.S. Court of Appeals of the District of Columbia remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Representative John R. Kasich

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

The Honorable J. Bennett Johnston, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. For FY 1993, the NRC must collect approximately $518.9 million through these fees as compared to $492.5 million for FY 1992.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to the Commission's fee regulations would revise the fees currently charged to individuals and companies licensed by the NRC.

The proposed amendments to 10 CFR Part 170, which assess license and inspection fees for specific identifiable services would: (1) increase the cost per professional staff-hour for all full cost fees; and (2) revise all flat fees for radioisotope programs to reflect the increased cost per professional staff hour and the current estimate of the average hours required to process licensing actions or to conduct inspections.

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The proposed rule also requests public comments on the March 16, 1993, U.S. Court of Appeals of the District of Columbia remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Senator Mark O. Hatfield

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

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

Dear Mr. Chairman:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. For FY 1993, the NRC must collect approximately $518.9 million through these fees as compared to $492.5 million for FY 1992.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to the Commission's fee regulations would revise the fees currently charged to individuals and companies licensed by the NRC.

The proposed amendments to 10 CFR Part 170, which assess license and inspection fees for specific identifiable services would: (1) increase the cost per professional staff-hour for all full cost fees; and (2) revise all flat fees for radioisotope programs to reflect the increased cost per professional staff hour and the current estimate of the average hours required to process licensing actions or to conduct inspections.

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The proposed rule also requests public comments on the March 16, 1993, U.S. Court of Appeals of the District of Columbia remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Representative Barbara Vucanovich

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

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

Dear Mr. Chairman:

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. For FY 1993, the NRC must collect approximately $518.9 million through these fees as compared to $492.5 million for FY 1992.

In order to comply with the law, the Commission is proposing to amend its fee regulations in 10 CFR Parts 170 and 171. The proposed amendments to the Commission's fee regulations would revise the fees currently charged to individuals and companies licensed by the NRC.

The proposed amendments to 10 CFR Part 170, which assess license and inspection fees for specific identifiable services would: (1) increase the cost per professional staff-hour for all full cost fees; and (2) revise all flat fees for radioisotope programs to reflect the increased cost per professional staff hour and the current estimate of the average hours required to process licensing actions or to conduct inspections.

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The proposed rule also requests public comments on the March 16, 1993, U.S. Court of Appeals of the District of Columbia remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Proposed Revision
to 10 CFR Parts
170 and 171

cc: Representative Michael Bilirakis

NRC PROPOSES CHANGES IN FEE SCHEDULES;
SEEKS COMMENTS ON COURT DECISION

The Nuclear Regulatory Commission is proposing to amend its licensing, inspection and annual fee schedules to recover approximately 100 percent of its fiscal year 1993 budget.

The Commission also is seeking comments on its reconsideration of issues remanded by the U.S. Court of Appeals for the D.C. Circuit in a March 16 ruling relating to portions of the fiscal year 1991 fee schedule. The Court remanded to the Commission, for further consideration, the decision to exempt nonprofit educational institutions from the fee schedule on the grounds, in part, that they are unable to pass through the costs of the fees to their customers and the decision to allocate the generic costs associated with low-level radioactive waste management activities by groups of licensees rather than by individual licensee.

The proposed revisions implement the requirements of the Omnibus Budget Reconciliation Act of 1990 which requires the NRC to recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. The amount to be recovered in fiscal year 1993 is $540 million less approximately $21.1 million appropriated from the Nuclear Waste Fund.

Since the NRC's fiscal year 1993 budget has increased, compared fiscal years 1991 and 1992, the fees for most licensees represent increases over previous years. The proposed revisions

include an increase in the amount of annual fees assessed licensees operating nuclear power plants from about $3.1 million to about $3.2. For some fee categories, the fees also increase because there are now fewer licensees from whom to recover relatively fixed generic costs.

In addition the proposed amendments, among other things, would:

-- increase the agency-wide professional hourly rate, which is used to determine Part 170 licensing and inspection fees, from $123 to $132 per hour;

-- revise the flat license and inspection fees to reflect the most recent estimated average number of professional staff hours per licensing action or inspection;

-- establish a single inspection fee instead of different fees for routine and nonroutine inspections;

-- exempt from fiscal year 1993 annual fees those licensees and holders of certificates, registration and approvals who either filed for termination of their license or approval or for a possession only/storage license before October 1, 1992, and were capable of permanently ceasing licensed activities entirely before October 1, 1992; and

-- continue a maximum annual fee of $1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards.

Written comments on the proposed fiscal years 1993 fee schedule and on the proposed alternatives for addressing the U.S. Court of Appeals' remand issues should be received by (date).

They should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Approved for Publication

The Commission delegated to the EDO (10 CFR Part 1.31(c)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)) subject to the limitations in NRC Management Directive 9.17, Organization and Functions, Office of the Executive Director for Operations, Paragraphs 0213, 038, 039 and 0310.

The enclosed proposed rule amends 10 CFR Parts 170 and 171. These amendments are necessary to implement the requirements of Public Law 101-508 to recover 100 percent of the FY 1993 budget authority through license and annual fees. The proposed rule also requests comments on the March 16, 1993, U.S. Court of Appeals remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

The proposed rule is consistent with previous Commission fee policy decisions and does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8 or 9 Subpart C concerning matters of policy. I, therefore, find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

4/14/93
Date

James M. Taylor
Executive Director
for Operations

DAILY STAFF NOTES TO THE COMMISSION

OFFICE OF THE CONTROLLER

Proposed Rule Signed by EDO

On _____ 1993, the Executive Director for Operations approved a proposed rule that amends 10 CFR Parts 170 and 171. These proposed amendments to the Commission's fee regulations are necessary to implement the requirements of Public Law 101-508 to recover 100 percent of the FY 1993 budget authority through fees. The proposed rule also requests comments on the March 16, 1993, U.S. Court of Appeals remand decision relating to portions of the FY 1991 and FY 1992 fee schedules.

The proposed amendments to Part 170 (1) amend § 170.20 to change the cost per professional staff-hour from $123 per hour to $132 per hour; and (2) revise all flat fees for radioisotope programs.

The proposed amendments to Part 171 (1) increase the amount of the annual fees assessed to operating reactors, fuel cycle licensees and materials licensees.

The FY 1993 fees for most licensees have increased compared to FY 1992 fees because:

(1) The amount that must be recovered has increased from approximately $492.5M to $518.9M

(2) Fewer licensees are available to pay for the higher costs of regulatory activities not covered under 10 CFR Part 170 for some classes of licensees.

The FY 1993 annual fees are compared to those assessed for FY 1992 in the following table:

	Range of Annual Fees	
Class of Licensees	FY 1992	FY 1993
Operating Power Reactors	$3.0M to $3.1M	$3.2M to $3.3M
Fuel Facilities	$0.5M to $2.3M	$0.7M to $3.3M
Uranium Recovery Facilities	$58,800 to $167,500	$21,220 to $58,220
Transportation Approval Holders	$1,650 to $62,950	$1,120 to $67,520

Class of Licensees	Range of Annual Fees FY 1992	FY 1993
Materials Users (small entity)	$400 to $1,800	$400 to $1,800
Materials Users (other)	$580 to $16,550	$800 to $28,120
Other Licensees	$55,700 to $336,150	$65,000 to $382,220

This notice informs the Commission that, in accordance with the authority delegated to the EDO, the EDO has signed this proposed rule and proposes to forward it on _____ to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

This is Proposed

rule 1 by law

4/14/92

Signed, with added

Art re LLW

CURTIS