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

IMPORTANT NOTICE

May 24, 1984

THIS NOTICE RELATES TO A REVISED SCHEDULE OF NRC FEES FOR ALL PARTS 30, 40, 50, 55, 61, 70, 71, 72 AND 73 LICENSEES, APPLICANTS AND VENDORS

Gentlemen:

On November 22, 1982, the U.S. Nuclear Regulatory Commission published in the Federal Register (47 F.R. 52454) for public comment a Notice of Proposed Rule Making which would amend its schedule of fees in Part 170 for facilities and materials applications and licenses.

After consideration of comments received, the Commission has adopted a revised schedule of fees as set forth in the enclosed amendment to 10 CFR Part 170, Fees For Facilities and Materials Licenses and Other Regulatory Services under the Atomic Energy Act of 1954, as amended. The revised rule and schedule was published in the Federal Register on May 21, 1984, and will become effective June 20, 1984. It establishes for the first time fees for (1) non-routine or reactive inspections and (2) Part 55 requalification and replacement operator examinations. Other fees have been adjusted to take into account increased application review and inspection costs.

Based on comments, the final rule differs in several respects from the November 22, 1982 proposed rule. A summary statement of the changes may be found on page 21300 of the enclosure (items 1 through 12). The most significant change was to retain a predetermined ceiling or maximum fee for a majority of applications and licenses where fees are computed on an individual basis using professional staff-hours and contractual services costs expended for the case.

We wish to draw your attention to the revised billing procedure in Section 170.12 of the amended rule. Under this procedure where applications are subject to the full review costs, the applicant will pay such costs as the work or review progresses. Where the application was on file prior to June 20, 1984, all review effort expended prior to June 20, 1984 will be billed at the professional staff rate used in the 1978 rule. Work initiated on or after June 20, 1984 will be

billed at the professional staff rates shown in Section 170.20 of the amended rule. The first itemized billing will occur shortly after the effective date of the amended rule and subsequent billings will be at six-month intervals thereafter as the review progresses or when the review of an application is completed, whichever is earlier. Applications filed on or after the effective date of the rule will be billed at six-month intervals. Applications for license renewals or amendments, and other approvals for which the full fee was paid under the March 23, 1978 schedule are not subject to additional charges.

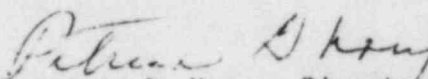
For inspections that are subject to fees based on the full costs of the inspection effort, the licensee will be billed at the end of each calendar quarter for completed inspections that were initiated on or after June 20, 1984. Reactor licensees, who were billed once a year under the March 23, 1978 rule will be billed on a prorated basis using the 1978 schedule for the time elapsed since they were last billed under the 1978 rule and the effective date of the amended rule. On or after June 20, 1984, all inspection effort will be billed under the rates in the amended rule.

The enclosed Federal Register notice contains several corrections of errors made in printing. These corrections will be published in a subsequent issue of the Federal Register, however, we believe it is important for you to receive a copy of the amendment as soon as possible.

Questions regarding the revised license fee schedule should be submitted in writing to:

License Fee Management Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Sincerely,


Patricia G. Norry, Director
Office of Administration

Enclosure:
Notice of Rule Making

Rules and Regulations

Federal Register

Vol. 49, No. 99

Monday, May 21, 1984

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

Revision of License Fee Schedule

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations that include the schedule of fees for inspections and for the review of applications and requests for permits, licenses, approvals, amendments, renewals, and special projects. The revised schedule of fees will more completely recover NRC costs incurred in providing services to identifiable recipients, including both materials and facility applicants and licensees. The revision is based on the costs of providing services in accordance with the Commission's license fee guidelines published on May 2, 1977; subsequent evaluation of costs incurred by the NRC for inspection and review activities; and evaluation of public comments on the proposed revision of the regulations on fees.

EFFECTIVE DATE: June 4*, 1984. *

FOR FURTHER INFORMATION CONTACT: William O. Miller, License Fee Management Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492-7225.

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking on November 22, 1982 (47 FR 52454-52466), which was corrected on December 17, 1982 (47 FR 56505-56506), revising its fee regulations and schedule of fees for review of applications and requests for permits, licenses, amendments, renewals, approvals, special projects, reactor operator testing and routine and non-routine inspections. The proposed schedule would have removed the ceiling or maximum limits on fees for review of applications or requests for

reactor construction permits, licenses, amendments, approvals, and topical reports; inspection of reactor facilities; applications or requests for uranium enrichment plants; major materials fuel cycle activities, including applications and licenses for 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, receipt and storage of spent fuel, possession and use of source material in recovery operations; applications for licenses for receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by burial by the licensee and licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; applications for licenses authorizing the use of byproduct material for field flooding tracer studies; applications or requests for approval of spent fuel casks and packages; and applications or requests for review of standardized spent fuel facilities or special projects.

The notice of proposed rulemaking invited interested persons to submit written comments for consideration in connection with the proposed amendments on or before January 18, 1983. Upon request, the Commission extended the comment period to February 8, 1983.

The Commission placed in its Public Document Room at 1717 H Street, NW., Washington, D.C., data used in ~~developed~~ the proposed rule and revised ** schedule of fees. In addition, the Commission's staff has been available to answer any questions concerning the notice of proposed rulemaking.

The November 22, 1982 notice of proposed rulemaking set forth the Commission's guidelines for fees under Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (now codified at 31 U.S.C. 9701). These guidelines 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. 336 (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

* June 20, 1984

** developing

to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the Independent Offices Appropriation Act of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. *National Cable Television Association v. Federal Communications Commission*, 554 F. 2d 1094 (1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F. 2d 1118 (1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F. 2d 1109 (1976); and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F. 2d 1135 (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, when the U.S. Court of Appeals for the Fifth Circuit held in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F. 2d 223 (1979), cert. denied 44 U.S. 1102 (1980), that (1) the Nuclear Regulatory Commission 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 in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (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.

On July 19, 1982, the U.S. Court of Appeals for the First Circuit decided the *New England Power v. NRC*, 683 F. 2d 12 (1st Cir. 1982) concerning the assessment of fees for withdrawn applications. The Court held that applicants may not be billed for the cost of reviewing withdrawn applications for which the request for withdrawal was filed with the Commission before November 6, 1981, the effective date of the Commission's interpretative rule concerning this matter. The Court further stated that "review work performed by the NRC at the request of an applicant constitutes a sufficiently substantial and particularized benefit to the applicant to justify the imposition of

fees under the court's reading of the IOAA."

The NRC staff examined the Fiscal Year 1981 costs of providing licensing review and inspection services and determined that the Commission's March 23, 1978 schedule of fees in 10 CFR Part 170 was not adequate to cover the costs of providing the service nor did they meet the intent of Congress as set forth in Title V of the Independent Offices Appropriation Act of 1952. Title V of the Independent Offices Appropriation Act was formerly codified at 31 U.S.C. 483a. With the enactment of Title 31, United States Code, into positive law, Pub. L. 97-258, September 13, 1982, 96 Stat. 1051, the law is now found at 31 U.S.C. 9701, and reads as follows:

Sec. 9701. Fees and charges for Government services and things of value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

- (1) Fair; and
- (2) Based on—
 - (A) The cost to the Government;
 - (B) The value of the service or thing to the recipient;
 - (C) Public policy or interest served; and
 - (D) Other relevant facts.

(c) This section does not affect a law of the United States—

- (1) Prohibiting the determination and collection of charges and the disposition of those charges; and
- (2) Prescribing bases for determining charges, but a charge may be determined under this section consistent with the prescribed bases.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1051)

Commission guidelines (47 FR 52454) were used as the basis for determining whether or not a particular licensing or inspection service rendered by the NRC may be subject to cost recovery under this rule and what the fee may be. The November 22, 1982 notice of proposed rule making and the schedule of fees contained therein contemplated full cost recovery where it was determined to be fair and equitable.

In developing the revised schedule, the staff analyzed the functions performed by each NRC office to determine which activities, if any, provided special benefits to applicants

or holders of licenses, permits and approvals. After each service was properly analyzed and categorized, a yearly professional staff rate was developed for the Offices of Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards (NMSS), and Inspection and Enforcement (IE), and for the Advisory Committee on Reactor Safeguards (ACRS), Atomic Safety and Licensing Board Panel (ASLBP), and Atomic Safety and Licensing Appeal Panel (ASLAP). The rates in § 170.20 were developed using (1) each office's costs of personnel compensation (salaries), personnel benefits, administrative support and travel, (2) the number of professional employees working in each program office (excluding administrative, supervisory and management direction employees), and (3) the overhead support costs based on an analysis of Program Direction and Administration and Program Technical Support provided to NRR, NMSS, IE, ACRS, ASLBP, and ASLAP.

After the analysis, the staff effort and other costs of the Offices of the Secretary (SECY), Controller (CON), and Management and Program Analysis (MPA) now Resource Management, Administration (ADM), Executive Legal Director (ELD), and Executive Director for Operations (EDO) were allocated as overhead support to other NRC offices. These costs of SECY, ELD and EDO were allocated on a percentage basis while the costs of ADM and CON were distributed to all NRC offices on a pro rata basis based on staff complement in each office.

Analysis of Comments Received

One hundred twenty-nine letters were received commenting on the proposed revision to Part 170. Fifty-three letters were from persons concerned with Part 50 facilities and 76 commented on fees for materials licenses. Fifty-two of the 76 letters commenting on materials licenses were concerned with medical programs, eight were concerned with uranium mining or milling interests, and the remaining 16 were concerned with other types of industrial applications. In addition to the 129 letters of comment, 13 letters of inquiry were received from Congressmen. Copies of all comment letters are available for public inspection or copying for a fee at the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C.

The comments ranged from strong opposition to all fees to the argument that the proposed fees were inadequate to recover the NRC's costs of all work

* Broadcasters

** Capital Cities Communication, Inc.

necessary to protect the public health and safety and environment.

Most comments took issue with the proposed amendment in six areas.

(1) The proposed elimination of ceilings on fee; (2) retroactive application of the proposed amendments; (3) charges for certain kinds of exemptions or extensions of time required to comply with a rule; (4) the need for NRC management control over the review and inspection process; (5) charges for non-routine inspections; and (6) proposed fees for medical program licenses.

Elimination of Ceilings

Comments on the proposed elimination of maximum fees asserted this action was inequitable and did not take account of staff inefficiencies and variations in the work product of personnel that exists in the licensing process. Commenters asserted that these variations in staff efficiencies are beyond the control of the applicant and that the applicants should not have to pay for perceived staff deficiencies and inefficiencies in the licensing process.

In legal terms, it is clear that the Commission may charge the full cost of processing an application for which the applicant receives a special benefit not available to the public at large. This is clearly one of the conclusions to be drawn from *Mississippi Power and Light v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979) where the court approved the fee rule and schedule published in February, 1978. That fee schedule included full cost recovery for several kinds of licensing activities as well as Commission reviews that fell within the category of special projects. In upholding the fee schedule, the court explicitly emphasized the legal authority of the Commission to recover the full cost of providing services to identifiable beneficiaries. See *id.* at 232 and 233.

Although there is ~~not~~ legal objection * to full cost recovery, in response to comments received, the final rule has been amended to retain a predetermined ceiling or maximum fee for a majority of applications and licenses where the fees are computed on an individual basis using the professional staff hours and the professional staff rates contained in § 170.20 and contractual services costs expended for the case. The ceilings represent, in most instances, the top of the cost ranges shown in the proposed rule for the various fee categories.

For power reactor operating licenses, McGuire 1 review costs were used as the ceiling for the operating license fee since it was the only full or 100% power operating license issued in FY 1981 for a

first unit at a site. The McGuire review did not encompass any unusual review problems and could be considered a normative operating license review. 46,200 professional staff hours were required for the McGuire 1 review and when these hours are multiplied by the appropriate FY 1981 staff rates and the costs of contractual support services are added, the cost is approximately \$3.1 million for the operating license.

There is no firm data base that may be used to establish a ceiling for reactor construction permits since the NRC has not completed a construction permit review since January 1979. Only the Hanford/Skagit and Clinch River applications are under review and indications are that the Hanford/Skagit application will be withdrawn. The Clinch River Breeder application is unique and incomplete. At this point, costs incurred in the ongoing review of Skagit 1 are approximately \$3 million. Accordingly, no ceiling has been established for construction permit reviews for power reactors.

The NRC has no applications on file for research or test reactor facility construction permits or operating licenses and none are anticipated. Consequently, no ceilings have been established.

On December 17, 1982, the NRC issued a manufacturing license to Offshore Power Systems for eight floating nuclear plants at the preliminary design stage. This is the only reactor facility manufacturing license that the Commission has issued. When the FY 1981 professional staff rates are applied to the professional hours required to complete the review of the preliminary design plus the contractual services costs expended, the cost for the review is approximately \$3.2 million. Accordingly, based upon actual experience for this category, the new ceiling for the review of a manufacturing license preliminary design is approximately \$3.2 million. The Commission has had no data base to use in developing a ceiling for review of a final design for manufactured reactor facilities.

Ceilings have been established for the review of Part 50 power reactor applications for license amendments and other approvals. The March 1978 rule separated applications for license amendments and other approvals into six classes based on the complexity of the review. In developing a ceiling for this final rule, the Commission examined approximately 200 completed power reactor amendment actions and applied the FY 1981 professional rates (§ 170.20) to the professional hours expended for each of these reviews. The

review costs ranged from a few hundred dollars for an administrative type amendment to \$164,600 for an amendment authorizing repair of a steam generator. The 1981 amendment authorizing steam generator repair required 2,609 professional hours and \$2,800 in contractual support services costs to complete the review. This application was used as the ceiling for power reactor license amendment and other approval fees. A ceiling of \$42,100 has been established for test and research reactor facility license amendments based on the upper limit of cost shown in the November 22, 1982 notice.

The Commission has not changed the ceiling of \$20,000 on charges for the reviews of topical reports. These reports are normally reviewed independently of any specific application for a construction permit or license and should benefit the NRC licensing process and the utility by reducing the time required to review certain applications. The Commission believes that the upper limit of \$20,000 for a topical report review is fair and equitable and should not discourage the submission of such reports. The ceiling applies to all persons filing topical reports for review and is consistent with Commission license fee guidelines as set forth in the Commission's November 22, 1982 notice of proposed rulemaking.

A limit of \$147,600 has been established as the ceiling that may be assessed a utility for Part 55 examinations and associated activities conducted for each of its plant site(s) during any one-year period. This ceiling is based on workload data developed by the Office of Nuclear Reactor Regulation (ONRR) which shows that on the average 1.32 professional staff years are expended per site each year to conduct requalification examinations, replacement examinations and reexaminations for reactor operators. Based on the FY 1981 professional staff rates, the NRC's average cost for this service would be \$147,600 and this figure has been used as the ceiling which may be assessed during any one-year period per site.

Ceilings have been retained for review of applications for preliminary and final standardized reference design approvals filed by vendors and architect-engineers for reactor facilities. No preliminary design approvals (PDAs) or final design approvals (FDAs) were issued in FY 1981 and the only approval issued in recent years was the FDA for GESSAR II issued July 27, 1983, to General Electric. The review of GESSAR II required 15,176 professional staff-

hours and \$468,493 in contractual services costs. Since GESSAR II is the only recent standardized reference design approval completed, it was used as the base to establish a ceiling for review of standardized reference designs filed by vendors or architect-engineers. The ceiling is approximately \$1.4 million and was computed by using the professional staff-hours expended for the review multiplied by the staff rates in § 170.20 and the costs of contractual services. The NRC has no recent data to use in developing ceilings for amendments and renewals of preliminary and final design approvals.

Ceilings have been retained on fees for routine inspection of nuclear power reactor facilities (Category 170.21A); test, research and critical facilities (170.21C) and all categories of materials licenses except special nuclear material license categories 170.32 1E, 1F and 1I; source material license category 170.32 2E; and waste disposal license category 170.32 4A. The November 22, 1982 notice of proposed rulemaking would have eliminated ceilings on inspection fees for all Part 50 licenses, fuel cycle licenses, licenses authorizing receipt and burial of radioactive waste and licenses authorizing contingency storage of low-level radioactive waste at nuclear power reactor sites.

The revised ceiling on fees for routine inspections of an operating nuclear power reactor is \$300,000, and is based on actual FY 1981 inspection experience. This ceiling is a combined maximum that may be charged for routine safety and safeguards inspections commenced on or after the effective date of this rule and represents the maximum amount that may be charged for each licensed reactor unit during a one-year period. No ceilings have been developed for special nuclear material license categories 170.32 1E, 1F and 1I; source material license category 170.32 2E; and waste disposal license category 170.32 4A because of the limited inspection activity and inspection cost data ~~for~~ * these licenses. NRC records show only four category 1E licenses, two 1F licenses, seven 1I licenses, seven 2E licenses and two 4A licenses.

There are no ceilings in the final rule for non-routine or reactive inspections, except for small materials license programs in fee categories 170.32 1J, 1K, 2D, 2F, 2G, 3A-P and 4B through 8A. Ceilings were not established for these licenses because the level of inspection effort required to deal with incidents, or allegations, or required for followup on program deficiencies or implementation of specified safety requirements is determined on the basis of the safety

significance and threat to the public health and safety. Fees for non-routine inspections where no ceilings are shown in the rule will be based on full costs.

Ceilings have been retained for review of applications for renewal and amendment of special nuclear material license categories 170.31 1A, 1B, 1D, 1E, 1F and 1G. Fees for new special nuclear material licenses in categories 170.31 1A-1G, 1H1 and 1I will be based on full cost without ceilings because the NRC has no recent data to use in developing ceilings and no new applications are anticipated for these categories. Ceilings are retained for source material license categories 170.31 2A and 2B for new licenses, amendments and renewals and for categories 170.31 2C and 2D for license renewal and amendment only. Ceilings are retained for waste disposal license category 4A for new licenses, renewal and amendment. Ceilings have been retained for transportation certificates of compliance categories 170.31 10A-10E. These ceilings are based on revised estimates of review effort provided by the licensing staff. In instances where the licensing staff estimates exceed the top of the cost range shown in Table 10 of the November 22, 1982 notice, the Commission has decided the upper range of cost shown in Table 10 will be retained as the ceiling.

The ceilings set forth in this final rule represent the maximum an applicant or licensee will pay for NRC services; but in no event will the fee assessed exceed the cost of reviewing an application or conducting an inspection.

Retroactive Application of Fees

Comments regarding "retroactive" application of fees were directed primarily to the question of applying full cost recovery to applications already on file and being processed at the time this rule change would become effective. Since the final rule would now retain ceilings for most major licenses, and the hourly rates established by this rule will apply only to work that occurs after the effective date of the final rule, this particular aspect of the question of "retroactive" application of the amendments is no longer germane. However, the Commission believes that the charge of "retroactive" application of the rule, implied by the commenters to be illegal, should be addressed in detail.

The Commission fails to see an impermissible retroactive application of the rule. For full license fees that are payable in advance on filing of an application, the fees are for future review and there is no retroactive application involved; most materials

license applications would be in this grouping. For reactor construction permits and operating licenses, and for some major fuel cycle materials licenses, an initial application fee is charged with the balance of the fee to be paid in installments on a full cost basis as the work progresses until the full fee is reached. In such cases, the hourly rates established by this final rule will apply only to work that takes place on or after the effective date of the final rule. The hourly rates used for the 1978 rule (43 FR 7210) will be applied to work completed prior to the effective date of the final rule. Billing and payment will be for work in progress, and again no element of retroactivity is present.

For construction permit and operating license applications filed before the ~~effective~~ date of this final rule, there is no change in the Commission's position respecting the applicability of the fee schedule. Just as with the fee schedule published February 21, 1978 (43 FR 7210), the Commission's position is that the fee due is that fee in the schedule legally in effect in the codified regulations at the time the full fee becomes payable. This position was expressly stated in the Statement of Considerations to the 1978 rule. See 43 FR 7210, 7215. In approving in total the 1978 fee rule, the court in *Mississippi Power and Light v. U.S. Nuclear Regulatory Commission*, supra, accepted and ratified this position. The Commission's position was also ratified in *New England Power v. U.S. Nuclear Regulatory Commission*, 683 F. 2d 12 (1st Cir. 1982), where the court allowed a new rule charging a fee for withdrawn applications to be applied to applications withdrawn after the effective date of the rule (although not before), regardless of when the application was filed. In this case, it was clear that while no fee was chargeable until the new rule was effective, this fee would be chargeable to all applications withdrawn after its effective date. Thus, for both license fees and fees for withdrawn applications, the controlling cases establish that the fee to be charged is the fee in the rule in effect at the time the license is issued or the application withdrawn. The right of the Government to collect the full fee and the obligation of the applicant to pay are finally fixed at that time, and not before.

The concept of impermissible retroactivity applies only to those cases where a new law or rule is applied to transactions completed in the past, prior to the new rule, where the rights and obligations of the parties already have been fixed. See *Sturges v. Carter*, 114 U.S. 511, 519 (1884); *Reynolds v. United*

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States, 292 U.S. 443 (1934). It is clear from the action of the courts in both *Mississippi Power and Light v. U.S. Nuclear Regulatory Commission*, *supra*, and *New England Power Co. v. U.S. Nuclear Regulatory Commission*, *supra*, that applicants have no antecedent right in any given fee (or absence of a fee) that was not finally due and levied on the applicant before the effective date of a rule enlarging a fee or imposing a new fee.

Commenters, however, cited a few cases to support their characterization of the Commission's proposed rule revision as impermissibly "retroactive." Among those cases cited, *Securities and Exchange Commission v. Chenery Corp.*, 332 U.S. (1947), in upholding an alleged "retroactive" administrative order of the SEC, appears to support the Commission's position more than commenters' position. Two other cases cited by commenters, *N.L.R.B. v. Majestic Weaving Co.*, 335 F. 2d 854 * (2nd Cir. 1966), and *Retail Wholesale and Department Store v. N.L.R.B.*, 466 F. 2d 380 (D.C. Cir. 1972), are concerned with a very specialized national labor law case of applying a newly announced rule of decision in an adjudication to other adjudications in which the conduct of the parties predated the new rule and which relied upon a prior rule of decision. As the discussion in *Retail* indicates, even in these cases the answer to the question of permissible or impermissible retroactive application seems to lie in the discretion of the court. See also, *H. and F. Binch Co. Plant of Native Laces, etc. v. N.L.R.B.*, 456 F. 2d 357 (2nd Cir. 1972).

One commenter also took issue, on the basis of retroactive application of the fee schedule, with the removal of the ceiling for review of topical reports submitted for review prior to the effective date of these amendments. Two cases cited by this commenter, *Saint Francis Memorial Hospital v. Weinberger*, 413 F. Supp. 323 (N.D. Cal. 1976) and *Phillips Petroleum Co. v. Department of Energy*, 449 F. Supp. 760 (D. Del. 1978), both illustrate an application of the general principle that a rule cannot be applied retroactively to established antecedent rights in completed transactions. In the first case, an improperly issued rule was applied retroactively by the agency to deny a hospital its medicaid reimbursement for construction interest which it had paid and expensed rather than capitalized as required by the improper rule. In the second case, a rule was applied retroactively by the Department of Energy to deny to an oil refiner passed through, nonproduct cost increases

previously allowed under DOE staff practices. These cases are consistent with *New England Power Co. v. U.S. Nuclear Regulatory Commission*, *supra*, where the court disallowed retroactive application of the new rule to applications withdrawn before its effective date; that is, the Commission could not change antecedent financial rights in fully completed transactions.

The Commission's position is that observations with respect to the asserted retroactive application of the new schedule to major licenses would also apply to increasing the ceiling for topical reports were the Commission to do so, however, in view of the fact that the Commission has not changed the ceiling for topical reports there is no need to further address the question. The action would not be retroactive because, under the Commission's rules as ratified by the courts, an applicant has no established antecedent right in the full amount of a fee until there is a fixed obligation to pay the full amount.

Fees for Requests for Exemptions or Extensions

Some reactor licensees expressed concern with the proposal to charge fees for requests for exemption or extensions of time to comply with Commission regulations. The rule published for comment proposed to change the rule on fees for requests for exemptions and extensions of time in two areas. First, the Commission's discretion to waive fees in certain instances would no longer be explicitly stated as done in footnote 2 to 10 CFR 170.22, and applicants and licensees should not depend upon an automatic exercise of Commission discretion in waiving fees. This is reflected in the revised wording of footnote 1 to the new 10 CFR 170.21. Discretionary exemption authority still exists, however, in the unchanged 10 CFR 170.11(b)(1). This change is primarily one of procedure, not substance. Further, amendments resulting directly from orders issued pursuant to 10 CFR 2.204 still remain exempt from fees.

Second, the proposed change would add exemptions from regulations to the list of Commission actions on applications subject to fees, an area not covered in the 1978 rule. In opposing this change, a few commenters cited *Connecticut Light and Power Co. v. NRC*, 373 F. 2d 525 (D.C. Cir. 1962) in support of their contention that fees should not be charged for exemptions from regulations. In this case the court, in upholding the NRC rule, stressed that the rule contained built-in flexibility in an exemption procedure under which licensees could show that an alternative

to a prescribed requirement provided equivalent safety protection. Because the exemption feature of that rule was intended to be at the option of the licensee (i.e., the licensee could either comply with the rule as written or request an exemption that served, among other things, to allow more time for compliance), a licensee applying for an exemption did so for its own benefit. The review of the exemption request and the issuance of an approval is a service to the applicant that can be legitimately charged for when covered by the rule. It is the view of the Commission that the case is not persuasive on the point of not charging for requested exemptions from regulations.

In issuing its 1978 rule, the Commission exempted from fees certain applications for Commission approvals that had never been subject to fees and which were filed prior to the effective date of the rule. This was done on the grounds of fairness and equity because some applicants had already received approvals on a fee-free basis, while others in the same class had not and, were it not for the Commission's discretionary exemption, would have been subject to payment of a fee (See 43 FR 7210, February 21, 1978).

The final rule will allow the Commission to exercise its discretion in the same manner with respect to those exemption requests not previously subject to fees which were filed with the Commission prior to the effective date of this amendment to 10 CFR Part 170. This would primarily include exemption requests filed under the fire protection rule (10 CFR 50.48) and under 10 CFR 30.11, 40.14, 50.12, 70.14, and 73.5. Request for exemptions filed after the effective date of this amendment will be subject to fees.

Management Oversight

There were several comments that without ceilings on fees NRC management may not exercise adequate control over the review and inspection process to control costs and there would be little or no incentive to conclude license reviews and inspections quickly and use resources efficiently. It was suggested that there may be excessive use of contractor services in licensing and inspection.

The NRC's principal concern under the Atomic Energy Act of 1954, as amended, is public health and safety. While the Commission is committed to the expeditious review of each application and uses all reasonable means of keeping costs as low as feasible, its responsibility for health and

safety and environmental protection cannot be compromised. The Commission's licensing and inspection budgets are based on the need to meet the agency's statutory responsibilities. The Commission exercises management controls to provide that its regulatory responsibilities are efficiently and effectively discharged.

To ensure that applications are processed in a timely and cost-effective manner, each NRC Office in the licensing process develops and works in accordance with an approved operating plan. Upon receipt of applications, schedules are established and resources allocated for each review based on the amount of time and professional staff effort determined necessary to complete the particular type of application or activity. Since the total assigned workload must be completed with limited resources, management is continuously challenged and, indeed, evaluated on its ability to balance workload and assigned resources in the most efficient and effective manner. Similarly, management is expected to adhere to established review schedules and changes are approved only with suitable justification. The staff's performance in meeting schedules is monitored continuously and critically by NRC staff management, the Commission, Congressional oversight committees and by the applicants and licensees.

Commenters suggested that there are factors which affect the cost of reviews and inspections that do not increase value to the recipient of the service; such factors as meetings attended by staff and reassignment of personnel to other projects were most often cited. Management exercises control to ensure that only those staff members who have a need-to-know or something to contribute participate in meetings. In certain instances, reviews may be delayed because project personnel are assigned to a higher priority task. This may occur for a variety of reasons, including applicant/licensee late responses to NRC requests for additional information. In any event, the agency must maintain flexibility in order to balance staff resources and workload efficiently and effectively.

The staff routinely prepares and maintains updated workload forecasts and resource allocation plans to enable management to make early determinations as to the potential need for outside contract assistance. In most instances, where outside assistance is required, the agency will utilize the service of experienced laboratories or commercial contractors.

It was suggested by the uranium milling industry that the NRC should eliminate or greatly reduce the use of outside technical consultants and use its staff with adequate management controls to review applications. Representatives also cited instances where they felt the NRC disregarded the input of consultants.

In reviewing applications, the agency uses existing staff where possible. However, it is sometimes difficult to find and retain qualified experts in all the various disciplines necessary to perform licensing reviews. Also, licensing work is sufficiently varied so that it is not always possible to justify having certain types of full-time experts on the staff to do the occasional reviews demanding their expertise. Consequently, outside technical consultants are used as needed. Thus, the employment of direct staff is not always more cost effective. As to disregarding the advice of consultants, the situation noted by the commenter resulted from experience and knowledge gained by NRC between the time that a draft Environmental Impact Statement (EIS) had been prepared using consultant input and the issuance of the final EIS. Operational difficulties at the first commercial scale mining operation required the staff to consider the site-specific hydrological characteristics in more detail; in effect, the work performed earlier by NRC consultants was overtaken by events.

To better manage contractual efforts, a Technical Assistance Program Manager is assigned to each contract and has an oversight function which includes cost and schedule control. The Program Manager is responsible for the review and approval of all contract costs that are to be included in any license fee. In the case of very large contracts, the NRC uses a full-time dedicated Technical Assistance Program Manager Group to manage, review, and oversee these contract operations.

Charge for Non-Routine Inspections

Several commenters expressed concern about the proposal to charge for non-routine (i.e., unscheduled) inspections. The commenters correctly pointed out that the Commission stated in earlier notices that for policy reason it chose not to charge fees for non-routine inspections. For example, in the *Federal Register* notice of the current rule, the Commission stated that non-routine inspections would be excluded from fees based upon Commission policy (43 FR 7210, 7213, February 21, 1978), and that non-routine inspections are "considered to be an independent public benefit" (42 FR 22149, 22161, May 21, 1977). The commenters note that the

notice does not state the basis for the change in Commission policy. Commenters also imply that it is legally inappropriate to charge a fee for non-routine inspections.

Regarding the first point, the Commission has stated two reasons for deciding to charge for non-routine inspections. Both non-routine inspections and routine inspections deal with the same fundamental issues of safety, health physics, safeguards and physical security of special nuclear materials, and protection of the environment. Since 1978, providing this service of non-routine inspections has become a significant effort for the NRC inspection staff. For these reasons, the Commission is changing its policy on non-routine inspections and accordingly finds it appropriate to recover the costs of these services.

As to the second point, it is clear that even where a service provides a public benefit, if it also provides a special benefit to the recipient of the service, fees may be charged. No allocation of benefits is necessary. See: *Electronics Industries Assoc. v. F.C.C.*, 544 F. 2d 1109 (D.C. Cir. 1976).

In non-routine inspections the beneficiary is clearly identified and the specific benefit falls within the Commission's judicially approved fee guidelines. The non-routine inspection is a service necessary to assist a recipient in complying with statutory obligations or obligations under the Commission's regulations as in routine inspections.

No fees will be assessed for investigations conducted by the NRC Office of Investigations. These investigations are outside the definition of inspections. In addition, non-routine inspections that result from third party allegations will not be subject to fees and in computing an inspection fee the hours of the Enforcement Staff, Office of Inspection and Enforcement, involved in the processing and issuance of a notice of violation or civil penalty would be excluded.

Medical Program Fees

The largest block of comments came from physicians, hospitals or their representatives. The majority of these comments expressed the opinion that the proposed increase is excessive and will adversely affect patients' medical costs. It was also mentioned that the Government has cut medicare and medicaid payments. The currently effective schedule of fees was based on fiscal year 1977 costs and the fee for a medical program (except teletherapy) was set at \$190 for a new license; \$150 for a license renewal; and \$40 for an

amendment. Because licenses are issued for five-year periods, the average cost for a new license amounted to less than \$40 per year. In the revised schedule, the charge for a new license would be \$580, or a little more than \$100 per year for all medical licenses except for a new license fee category, the broad scope research and development license issued to some major medical institutions. The license fee for the broad scope license is \$1,200 for five years, or an average of \$240 per year. If the full cost of license fees was passed on to patients, it would result in a relatively minor increase in cost per patient.

Other Comments

There were comments that the NRC could reduce costs of licensing uranium milling activities by eliminating the requirement for the full National Environmental Policy Act (NEPA) environmental impact statement (EIS) for each application through the use of generic environmental statements supported by experience the NRC has gained to date through the licensing and inspection of uranium mining operations. The NEPA reviews being questioned generally fit into three types: first, new uranium mills; second, renewal of uranium mill licenses; and third, *in-situ* solution mining operations. For the first type, 10 CFR Part 51 of the Commission's regulations requires that an EIS be prepared. The Commission believes these rules are consistent with NEPA and the regulations of the Council on Environmental Quality. As for the second type review, the issue may be moot. Before the issuance of the Generic Environmental Impact Statement on Uranium Milling (GEIS), NRC had committed itself to doing an EIS at the time of the license renewal for existing mills and to continue this practice until the issuance of the GEIS. When the GEIS was issued, essentially all mills had been evaluated and EIS's issued. It has been NRC policy to perform an environmental assessment at the time of license renewal to determine whether a full EIS should be prepared for the renewal. Absent any significant changes, a negative declaration is the usual result. As for the third type of application, *in-situ* mining operations, the matter is currently being considered by the Commission's legal staff to determine if there is any mandatory requirement for an EIS.

One person commented as to why the proposed fee range for review of an application for an *in-situ* mining operation is higher than the applicant's cost to prepare the application. A large part of NRC review costs are incurred in

preparation of the EIS. NRC costs for preparation of the EIS are comparable to those of the Corps of Engineers, GSA, EPA and FHA, based on an August 9, 1977 GAO report to the U.S. Senate with figures updated to cover inflation.

Another factor that has a significant impact on licensing costs is the quality of the information and completeness of the application. In fact, there is a direct relationship between costs of review and the completeness and quality of an application, and this is under the control of the applicant.

Several commenters suggested that facilities and major fuel cycle applicants and licensees be billed for licensing services on a more frequent basis than at six-month intervals, e.g., on a monthly or quarterly basis, or alternatively to continue the present procedure of billing when the license or permit is issued. No one billing frequency is satisfactory to all applicants and licensees. Consequently, the billing procedures in this final rule are the same as the procedures described in the proposed rule. Applicants will be billed for review and licensing costs at six-month intervals as the review progresses or when review of the application is completed, whichever is earlier, for those applications where fees are based on full costs. Licensees will be billed at the end of each calendar quarter for completed inspections where fees are based on full costs.

It was suggested that elimination of the present Commission policy whereby payment of standard reference design (nuclear steam supply system or balance of plant) review cost are deferred until the design is referenced in a utility application may serve as a disincentive to standardization of the nuclear industry. Prior to March 1978, the NRC recovered none of these costs. The 1978 rule contained a deferred payment plan where the fee would be collected as the design is referenced in an application filed by a utility. The fee would be paid in five installments as the first five units were referenced. Since 1978, the Commission has recovered none of its costs incurred in review of preliminary and final designs except for application fees. The staff expects that the final design approval for CESSAR-80 will be issued within the next several weeks, and at that time the Commission will recover a portion of its review costs. Under the Independent Offices Appropriation Act of 1952, the Commission has the responsibility to recover its costs of providing special benefits to identifiable recipients and in this instance, the services are rendered

at the request of the vendor or architect-engineer.

One person commented that the costs of Part 55 reactor operator examinations should not be charged to the facility licensee since it is the reactor operator who receives the special benefit of the Part 55 license. Part 50 requires that applicants for reactor operating licenses have qualified reactor operators when the licenses are issued and subsequently to have approved requalification programs. The NRC must approve the licensee's initial program for qualifying reactor operators and its requalification/replacement programs. * Accordingly, it is the utility which applies for certification and consequently is the beneficiary of the Part 55 licensing action.

Several persons commented that fees should be eliminated for amendments issued for the convenience of the Commission and where amendments are submitted solely to comply with changes in Commission rules and regulations. Fees are not imposed for amendments issued solely for the convenience of the Commission and for which there is no request or application.

On the other hand, applications submitted as a result of Commission rules, regulations, or requests for license amendments that are necessary to protect the public health and safety and environment are subject to fees.

One person said that licensees should not be penalized by fees for requesting an amendment which would exempt them or provide relief from a general Commission rule that may not be applicable to a particular type of facility. If a rule is not applicable to a particular type of facility there is no need to request relief from it. If a request for clarification of the rule's applicability is presented, such a request for clarification would not require a fee.

It was suggested that fees for small materials licensed programs should be based on full cost so that applicants filing well-prepared and complete applications would pay only their full costs. In the final rule the Commission has elected to continue to set fees for these licenses by dividing them into several fee categories based on the type of material, use, complexity of the review, and licensing experience. The alternative of imposing full cost for each review and inspection would impose a significant administrative burden and expense upon the NRC since more than 8,000 individual fee determinations would be required each year. The fee assessed for each category of small Part 30, 40 and 70 programs would continue

* The following sentence was omitted: An individual operator cannot be licensed apart from a facility.

to be based on the average cost of providing the service to the recipients.

Several commenters suggested that applicants/licensees be provided with advance estimates of costs for specific applications. It is neither feasible nor practical to anticipate in advance the nature and extent of any problems which may develop during the review of a complex application. Similarly, it is not possible to predict the responsiveness of an applicant/licensee to a request for information. In most instances, however, ceilings have been established for licensing actions and routine inspections based on historical data. In those cases where it is not practical to develop ceilings due to limited experience, an estimate of costs could be made available based on a preliminary review of the application.

Several commenters expressed the idea that applicants/licensees should be able to audit NRC costs. Staff hours used in the review of an application/request are recorded against a docket or other control number assigned to the request. Likewise, inspection effort including preparation time, time on site, and documentation time are charged to an inspection report and recorded. Thus, where fees are to be based on full cost, staff time will be reviewed on a case-by-case basis. Any contractual costs will also be charged against a docket or control number. Therefore, a detailed statement of costs can be provided to an applicant/licensee upon request. Where questions arise on a particular fee, the NRC is prepared to review the disputed charge with the applicant or licensee representative.

Since 1978, the NRC has used professional staff hours and contractual services costs data to bill construction permit, operating license and other major fuel cycle applicants for licensing services. This final rule will also require full cost recovery for inspection of these licensees and for license amendments for facilities up to a specified ceiling or maximum limit.

Summary of Changes Incorporated in Final Rule

1. In most instances, except for non-routine inspections, where fees are based on professional staff hours and contractual services costs expended for the review, a ceiling or maximum has been established for each fee category.

2. Investigations conducted by the Office of Investigations will not be subject to fees.

3. Non-routine inspections that result from third-party allegations will not be subject to fees. In computing an inspection fee the time involved by the Enforcement staff, Office of Inspection

and Enforcement, in the processing and issuance of a notice of violation or civil penalty would be excluded.

4. In § 170.21, fee Category B, "Standard Reference Design Review," has been revised to add the terms "Preliminary" and "Final" for clarity. Category D in this section has been revised to be applicable only to "Manufacturing License" applicants and licensees since Category A covers those utility applicants referencing the design.

5. Footnote 2 to § 170.21 has been revised to state how the fee will be determined where an application may cover a one-step licensing process for power reactors, e.g., a combined review of the construction permit and operating license.

6. Section 170.41, "Failure by applicant or licensee to pay prescribed fees," has been revised to incorporate other Commission regulations that are pertinent to this part.

7. The scope of Part 170 has been broadened by adding a new § 170.2(n) that will apply to the requirements of 10 CFR Part 61.

8. Section 170.3 has been revised as follows:

(s) To delete the term "fuel reprocessing facilities," and the language "amendment or renewal of standardized reference design approvals" since these items are covered in § 170.21. The term "special projects" is further defined and additional examples given.

(t) To eliminate investigations conducted by the NRC Office of Investigations.

(v) Revised to emphasize that Part 55 reviews include such things as preparation, review, and grading of examinations and tests.

9. In § 170.31, fee Category 9, "Device, Product or Sealed Source Safety Evaluation," has been expanded to add two fee categories for the review of devices or sealed sources. The categories cover devices and sealed sources not intended for commercial distribution.

10. Several fee categories were re-established in §§ 170.31 and 170.32 to maintain a ceiling or maximum fee as a result of comments received.

11. In most cases, ceilings or maximum fees and billing frequencies have been re-established for the inspection fee schedule in § 170.32.

12. A new § 170.51, "Right to review and appeal of the Prescribed Fees," has been added to address concern about appeal rights relating to the assessment of fees.

Fee Collection

The NRC billing procedure is revised so that applicants pay review and licensing costs (professional staff hours and contractual) as the review progresses for those applications where fees are determined based on the full costs expended for the review. In certain instances full cost fees are limited by a ceiling. Under the revised procedure, charges will be assessed against all applicable applications currently on file with the Commission for permits, licenses, approvals, or special projects, except applications for renewals, amendments, and other required approvals for which fees have already been paid in accordance with the March 23, 1978 fee schedule and complete and acceptable special project applications filed prior to March 23, 1978.

Accordingly, for those applications currently on file for which fees are determined based on full review costs, the professional staff hours expended for the review of the application up to the effective date of the revised rule will be determined and the billing for that time period will be based on the professional staff rates established for the March 23, 1978 fee schedule. On or after the effective date of this final rule, the professional rates shown in § 170.20 will be used. For those applications currently on file, the first itemized billing for NRC services based on full costs will be made when this final rule becomes effective and continue every six months thereafter as work progresses or when review of the application is completed, whichever is earlier. For applications filed on or after the effective date of this final rule, itemized billings for NRC services based on full costs will be made at six-month intervals for all costs accumulated on each application. The revised billing procedure will enable the applicant to pay for work as it progresses. Under this rule, all applications that are to be assessed fees on a full cost basis are to be accompanied by the application fee specified in this part. In no event will the fee assessed exceed the full costs of reviewing an application, and in no circumstance will the applicant pay less than the application fee specified in this rule. Fees for applications not subject to full-cost charges will remain payable at the time the applications are filed with the Commission.

For those inspection fees that are to be based on full cost (professional staff hours and contractual), the Commission will bill each licensee at the end of each calendar quarter for completed inspections that were initiated on or

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after the effective date of this final rule. Inspection fees based on the average cost method of computation will continue to be due upon notification by the Commission.

Licensees currently billed once a year for inspections (Part 50 power reactor licensees, other production and utilization facility licensees, and possession-only licensees) will be billed under this final rule on a pro-rated basis for any partial year elapsed (less than 365 days) since they were last billed under the 1978 rule. That is, if 20 days have elapsed from the last billing period to the effective date of this final rule, the licensee would be billed 20/365 of the total fee as prescribed in the 1978 rule. Thereafter, those licensees will be billed quarterly based on the rates shown in 10 CFR 170.20 for inspections initiated on or after the effective date of this final rule. These pro-rated billings will be made when this final rule becomes effective. For those licensees who hold licenses that are billed on a per-inspection basis (small materials programs) if the inspection is started before the effective date of this final rule, the licensee will be billed in accordance with the fees established in the 1978 rule.

All revenues collected in fees by the NRC for providing licensing and inspection services to applicants and licensees have been and will continue to be deposited into the U.S. Treasury as miscellaneous receipts, and not used as an offset to the NRC appropriation.

Paperwork Reduction Act Statement

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

Regulatory Flexibility Certification

In the notice of proposed rulemaking published on November 22, 1982 (47 FR 52454), the Commission determined in its Regulatory Flexibility Certification that, based upon the available information, this rule was not expected to have a significant economic impact upon a substantial number of small entities as defined by the Small Business Act or the Small Business Administration regulations issued pursuant to the Act (13 CFR Part 121). The Commission did, however, invite any licensee who ~~consider~~ ^{*} itself to be a small entity to provide additional information by responding to four general questions on how the regulation could be modified to take into account the differing needs of small entities. In keeping with its normal practice, the Commission also mailed the proposed

rule document to each of its more than 9,000 licensees.

The Commission received 129 comments on the proposed rule, representing less than two percent of all NRC licensees. Of the 129 comments, only one mentioned the Regulatory Flexibility issue directly, recommending that NRC tier its license fees to charge smaller licensees reduced fees for licensing actions.

A total of 15 comments are believed to have come from small entities based upon a review of information contained in their comments. Six of these comments were from small hospitals, six from small radiology firms, one from a small uranium milling company, and two from other small materials licensees.

Each of the small hospitals, small radiology firms and two of the remaining small entities which commented were subsequently contacted by the Commission staff in an effort to obtain further information concerning the economic impact of the revised fee rule on their operation.

The license application fee would represent an increase of approximately \$500-\$1000 for each of the small hospitals (defined as a hospital with fewer than 150 beds by the Small Business Administration regulations, 13 CFR 121.3-10(d)(5)). When apportioned over the five-year life of the license, this increase would result in an annual increase of \$200 or as estimated by one hospital administrator, by about fifty cents for each procedure conducted by the nuclear medicine department. Most hospitals do not, however, have broad medical licenses and the annual increase in application fees would be about \$80. Other fees for license amendments and inspections, while not assessed on an annual basis, would occur as needed for amendments and inspections. The increase in fees for a routine inspection, which is generally conducted every one or two years, would be \$280.

The license fee revision for the small radiologist groups, most of which are associated with hospitals, are almost identical to those for the small hospitals.

The three remaining comments from various small materials licensees raised a number of concerns not specifically related to the regulatory flexibility issue posed by the Commission in its Certification Statement. A small uranium mine company commented on the lack of a specific upper limit on licensing fees which will be assessed on a full-cost basis for in-situ mining licenses. On the other hand, a small company with a gauging license and another with an irradiator license commented that their license application

fees should be based on full costs rather than an average cost established for whole licensing categories. None of these licensees, when contacted, indicated that this revised fee rule would have serious economic implications for their businesses.

Based upon the number of comments received on the proposed rule, analysis of the comments, and the additional information obtained from small entities, the Commission finds, and hereby certifies, that this rule will not have significant economic impact upon a substantial number of small entities.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 170 are published as a document subject to codification.

List of Subjects in 10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

PART 170—FEES FOR FACILITIES AND MATERIALS 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).

2. Section 170.2 is revised to read as follows:

§ 170.2 Scope.

Except for persons who apply for or hold the permits, licenses, or approvals exempted in § 170.11, the regulations in this part apply to a person who is—

- (a) An applicant for or holder of a specific byproduct material license issued pursuant to Parts 30 and 32 through 35 of this chapter;
- (b) An applicant for or holder of a specific source material license issued pursuant to Part 40 of this chapter;
- (c) An applicant for or holder of a specific special nuclear material license issued pursuant to Part 70 of this chapter;
- (d) An applicant for or holder of specific approval of spent fuel casks and shipping containers issued pursuant to Part 71 of this chapter;
- (e) An applicant for or holder of a specific license to possess power reactor

* considered

after the effective date of this final rule. Inspection fees based on the average cost method of computation will continue to be due upon notification by the Commission.

Licensees currently billed once a year for inspections (Part 50 power reactor licensees, other production and utilization facility licensees, and possession-only licensees) will be billed under this final rule on a pro-rated basis for any partial year elapsed (less than 365 days) since they were last billed under the 1978 rule. That is, if 20 days have elapsed from the last billing period to the effective date of this final rule, the licensee would be billed 20/365 of the total fee as prescribed in the 1978 rule. Thereafter, those licensees will be billed quarterly based on the rates shown in 10 CFR 170.20 for inspections initiated on or after the effective date of this final rule. These pro-rated billings will be made when this final rule becomes effective. For those licensees who hold licenses that are billed on a per-inspection basis (small materials programs) if the inspection is started before the effective date of this final rule, the licensee will be billed in accordance with the fees established in the 1978 rule.

All revenues collected in fees by the NRC for providing licensing and inspection services to applicants and licensees have been and will continue to be deposited into the U.S. Treasury as miscellaneous receipts, and not used as an offset to the NRC appropriation.

Paperwork Reduction Act Statement

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

Regulatory Flexibility Certification

In the notice of proposed rulemaking published on November 22, 1982 (47 FR 52454), the Commission determined in its Regulatory Flexibility Certification that, based upon the available information, this rule was not expected to have a significant economic impact upon a substantial number of small entities as defined by the Small Business Act or the Small Business Administration regulations issued pursuant to the Act (13 CFR Part 121). The Commission did, however, invite any licensee who ~~consider~~ ^{considered} itself to be a small entity to provide additional information by responding to four general questions on how the regulation could be modified to take into account the differing needs of small entities. In keeping with its normal practice, the Commission also mailed the proposed

rule document to each of its more than 9,000 licensees.

The Commission received 129 comments on the proposed rule, representing less than two percent of all NRC licensees. Of the 129 comments, only one mentioned the Regulatory Flexibility issue directly, recommending that NRC tier its license fees to charge smaller licensees reduced fees for licensing actions.

A total of 15 comments are believed to have come from small entities based upon a review of information contained in their comments. Six of these comments were from small hospitals, six from small radiology firms, one from a small uranium milling company, and two from other small materials licensees.

Each of the small hospitals, small radiology firms and two of the remaining small entities which commented were subsequently contacted by the Commission staff in an effort to obtain further information concerning the economic impact of the revised fee rule on their operation.

The license application fee would represent an increase of approximately \$500-\$1000 for each of the small hospitals (defined as a hospital with fewer than 150 beds by the Small Business Administration regulations, 13 CFR 121.3-10(d)(5)). When apportioned over the five-year life of the license, this increase would result in an annual increase of \$200 or as estimated by one hospital administrator, by about fifty cents for each procedure conducted by the nuclear medicine department. Most hospitals do not, however, have broad medical licenses and the annual increase in application fees would be about \$80. Other fees for license amendments and inspections, while not assessed on an annual basis, would occur as needed for amendments and inspections. The increase in fees for a routine inspection, which is generally conducted every one or two years, would be \$280.

The license fee revision for the small radiologist groups, most of which are associated with hospitals, are almost identical to those for the small hospitals.

The three remaining comments from various small materials licensees raised a number of concerns not specifically related to the regulatory flexibility issue posed by the Commission in its Certification Statement. A small uranium mine company commented on the lack of a specific upper limit on licensing fees which will be assessed on a full-cost basis for in-situ mining licenses. On the other hand, a small company with a gauging license and another with an irradiator license commented that their license application

fees should be based on full costs rather than an average cost established for whole licensing categories. None of these licensees, when contacted, indicated that this revised fee rule would have serious economic implications for their businesses.

Based upon the number of comments received on the proposed rule, analysis of the comments, and the additional information obtained from small entities, the Commission finds, and hereby certifies, that this rule will not have significant economic impact upon a substantial number of small entities.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 170 are published as a document subject to codification.

List of Subjects in 10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

PART 170—FEES FOR FACILITIES AND MATERIALS 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).

2. Section 170.2 is revised to read as follows:

§ 170.2 Scope.

Except for persons who apply for or hold the permits, licenses, or approvals exempted in § 170.11, the regulations in this part apply to a person who is—

- (a) An applicant for or holder of a specific byproduct material license issued pursuant to Parts 30 and 32 through 35 of this chapter;
- (b) An applicant for or holder of a specific source material license issued pursuant to Part 40 of this chapter;
- (c) An applicant for or holder of a specific special nuclear material license issued pursuant to Part 70 of this chapter;
- (d) An applicant for or holder of specific approval of spent fuel casks and shipping containers issued pursuant to Part 71 of this chapter;
- (e) An applicant for or holder of a specific license to possess power reactor

* considered

spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation issued pursuant to Part 72 of this chapter;

(f) An applicant for or holder of a specific approval of sealed sources and devices containing byproduct material, source material, or special nuclear material;

(g) An applicant for or holder of a production or utilization facility construction permit, operating license, or manufacturing license issued pursuant to Part 50 of this chapter;

(h) Required to have examinations and tests performed to qualify or requalify individuals as Part 55 reactor operators;

(i) Required to have routine and non-routine safety and safeguards inspections of activities licensed pursuant to the requirements of this chapter;

(j) Applying for or is holder of an approval of a standard reference design for a nuclear steam supply system ~~or~~ balance of plant;

(k) Applying for or already has applied for review of a facility site prior to the submission of an application for a construction permit;

(l) Applying for or already has applied for review of a standardized spent fuel facility design; or

(m) Applying for or has applied for since March 23, 1978, review of an item under the category of special projects in this chapter that the Commission completes or makes whether or not in conjunction with a license application on file or that may be filed.

(n) An applicant for or holder of a license, approval, determination, or other authorization issued by the Commission pursuant to 10 CFR Part 61.

3. In § 170.3, paragraphs (s), (t), (u), and (v) are revised and new paragraphs (y) and (z) are added to read as follows:

§ 170.3 Definitions.

(s) "Special Projects" means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators.

(t) "Inspections" means—

(1) Routine inspections designed to evaluate the licensee's activities within the context of the licensee having

primary responsibility for protection of the public and environment.

(2) Non-routine inspections in response or reaction to an incident, allegation, followup to inspection deficiencies or inspections to determine implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection.

(u) "Person" as used in this part has the same meaning as found in Parts 30, 40, 50, and 70 of Title 10 of the Code of Federal Regulations.

(v) "Part 55 Reviews" as used in this Part means those services provided by the Commission to administer requalification and replacement examinations and tests for reactor operators licensed pursuant to 10 CFR Part 55 of the Commission's regulations and employed by Part 50 licensees. These services also include related items such as the preparation, review, and grading of the examinations and tests.

(y) "Application" means any request filed with the Commission for a permit, license, approval, exemption, certificate, other permission, or for any other service.

(z) The phrase "review is completed" as used in this Part means that the review has been brought to an end, whether by reason of issuance of a permit, license, approval, certificate, exemption, or other form of permission, or whether the application is denied, withdrawn, suspended, or action on the application is postponed by the applicant.

4. In § 170.11 paragraphs (a) (3) and (4) are revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(3) A license authorizing the receipt, ownership, possession, use, or production of byproduct material, source material, or special nuclear material incidental to the operation of a production or utilization facility licensed under Part 50 of this chapter, including a license under Part 70 of this chapter that authorizes possession and storage only of special nuclear material at the site of a nuclear reactor for use as fuel in operation of the nuclear reactor or at the site of a spent fuel processing plant for processing at the plant, except for licenses authorizing storage of low-level radioactive waste at nuclear reactor sites.

(4) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production facility or utilization facility, other than a power reactor, to be used for teaching, training, or medical purposes, except

human use, or for byproduct material, source material, or special nuclear material to be used for teaching, training or medical purposes, except human use, or in connection with a facility, other than a power reactor, used for teaching, training, or medical purposes, except human use.

5. In § 170.12, paragraphs (b), (c), (d), (e), (f), (g), and (i) are revised to read as follows:

§ 170.12 Payment of fees.

(b) *License fees.* Fees for review of applications for permits, licenses, and facility standard reference design approvals are payable upon notification by the Commission. For each application on which the review charges are based on full costs and the application has been pending with the Commission for six months or longer, the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each.

(c) *Amendment fees and other required approvals.* All applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to fees based on the full cost of the reviews must be accompanied by an application fee of \$150. Fees for amendments, other required approvals and request for dismantling, decommissioning and terminating of licensed activities that are subject to full cost reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission, and each six-month period thereafter or when review is completed, whichever is earlier. Each bill will identify the applications and costs related to each. Amendment fees for materials licenses and approvals not subject to full cost reviews are payable at the time the application is filed.

(d) *Renewal fees.* All applications for renewals subject to fees based on the full cost of the review must be accompanied by an application fee of \$150. Fees for renewal of permits and licenses and other required approvals subject to full cost reviews are payable upon notification by the Commission.

Each applicant will be billed at six-month intervals for all accumulated costs on each application that the applicant has on file for review by the Commission, and each six-month period thereafter or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each. Renewal fees for materials licenses and approvals not subject to full cost reviews are payable at the time the application is filed.

(e) *Approval fees.* Applications for spent fuel casks, packages, and shipping container approvals, spent fuel storage facility design approvals, and construction approvals for plutonium fuel processing and fabrication plants must be accompanied by an application fee of \$150. Applications for facility standard reference design approvals must be accompanied by an application fee of \$50,000. Fees for applications that are subject to full cost reviews are payable upon notification by the Commission. For each application for which the review charges are based on full costs and the application has been pending with the Commission for six months or longer, the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each.

(f) *Special project fees.* All applications for special projects must be accompanied by an application fee of \$150. Fees for special projects are payable upon notification by the Commission. For each application for which the review charges are based on full costs and the application has been pending with the Commission for six months or longer the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each. For certification of a licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, there is no application fee. The licensee, vendor, or other recipients of the services will be billed at six-month intervals for full costs.

(g) *Inspection fees.* Inspection fees are payable upon notification by the

Commission. Inspection costs will include preparation time, time on site and documentation time and any associated contractual service costs but will exclude the time involved by the Enforcement staff, Office of Inspection and Enforcement, in the processing and issuance of a notice of violation or civil penalty.

(i) *Part 55 review fees.* The costs for Part 55 review services will be subject to fees based on NRC time spent in administering the examinations and tests that are generally given at the reactor site and any related contractual costs. The costs also include related items such as preparing, reviewing, and grading of the examinations and tests. The costs will be billed at six-month intervals to the licensee employing the operators.

6. A new § 170.20 is added to read as follows:

§ 170.20 Average cost per professional staff-hour.

(a) Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, or other required approvals under §§ 170.21 and 170.31 will be calculated based upon the full costs for the review using the following applicable professional staff rates:

(1) Office of Nuclear Reactor Regulation—\$62 per hour.

(2) Office of Nuclear Material Safety and Safeguards—\$58 per hour.

(3) Advisory Committee on Reactor Safeguards—\$62 per hour.

(4) Atomic Safety and Licensing Board Panel—\$62 per hour.

(5) Atomic Safety and Licensing Appeal Panel—\$66 per hour.

(b) Fees for inspections based on full cost under §§ 170.21 and 170.32 will be calculated using the following applicable professional staff rates:

(1) Office of Inspection and Enforcement and NRC Regional Offices—\$53 per hour.

7. Section 170.21 is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Applicants for construction permits, manufacturing licenses, operating 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 the following fees.

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility categories and type of fees	Fees ^{1, 2}
A. Power Reactors	
Application—Construction Permit	\$125,000.
Construction Permit	Full cost. ³
Operating License	\$3,077,400
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Other Approvals	\$164,600.
Renewal, Dismantling-Decommissioning, and Termination	Full cost. ⁴
Inspections: ⁵	
1. Routine	\$300,000
2. Non-Routine	Full cost. ⁴
B. Standard Reference Design Review	
Application—Preliminary	\$50,000.
Application—Final	\$50,000.
Approvals:	
1. Preliminary	\$1,427,100.
2. Final	\$1,427,100.
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Renewal, Other Approvals	Full cost. ⁴
C. Test Facility/Research Reactor/Critical Facility	
Application—Construction Permit	\$5,000.
Construction Permit	Full cost. ⁴
Operating License	Full cost. ⁴
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Other Approvals	\$42,100.
Renewal, Dismantling, Decommissioning and Termination	Full cost. ⁴
Inspections: ⁵	
1. Routine	\$3,200.
2. Non-Routine	Full cost. ⁴
D. Manufacturing License	
Application	\$125,000.
Manufacturing License:	
Preliminary Design Approval	\$3,252,300.
Final Design Approval	Full cost. ⁴
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Renewal, Other Approvals	Full cost. ⁴
Inspections: ⁵	
1. Routine	Full cost. ⁴
2. Non-Routine	Full cost. ⁴
E. Uranium Enrichment Plant	
Application—Construction Permit	\$125,000.
Construction Permit	Full cost. ⁴
Operating License	Full cost. ⁴
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Renewal, Other Approvals	Full cost. ⁴
Inspections: ⁵	
1. Routine	Full cost. ⁴
2. Non-Routine	Full cost. ⁴
F. Advanced Reactors	
Application—Construction Permit	\$125,000.
Construction Permit	Full cost. ⁴
Operating License	Full cost. ⁴
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Renewal, Other Approvals	Full cost. ⁴
Inspections: ⁵	
1. Routine	Full cost. ⁴
2. Non-Routine	Full cost. ⁴
G. Other Production and Utilization Facility	
Application—Construction Permit	\$125,000.
Construction Permit	Full cost. ⁴
Operating License	Full cost. ⁴
Application for Amendment, Renewal, Other Approvals	\$150.
Amendment, Renewal, Other Approvals	Full cost. ⁴
Inspections: ⁵	
1. Routine	Full cost. ⁴
2. Non-Routine	Full cost. ⁴
H. Production or Utilization Facility permanently closed down	
Inspections: ⁵	
1. Routine	Full cost. ⁴
2. Non-Routine	Full cost. ⁴
I. Part 55 Reviews	
Requalification and Replacement Examinations for Reactor Operators	\$147,600. ⁶

SCHEDULE OF FACILITY FEES—Continued

(See footnotes at end of table)

Facility categories and type of fees	Fee ¹
J. Special Projects	
Application	\$150
Approvals:	
1. Topical Reports	\$20,000
2. Amendments, Revisions and Supplements to Topical Reports	\$20,000
3. Licensee, Vendor, and Other Private Industry Personnel Certification as Instructors for Part 55 Reactor Operators	Full cost ⁴
4. All Other Reports, Special Projects and Amendments except those specified above in 1, 2, and 3.	Full cost ⁴

¹ Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to 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 such 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% of the facility's full rated power). Thus, if a licensee received a low power license as 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. The ceiling provided in Facility Category A is based on 100% power authorization. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

² The charge will not exceed the amount specified nor, where applicable, be less than the application fee. The charges will be based on the expenditures for professional staff time and appropriate contractual support services. For those reviews 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 and billings for that time will be at the professional rates established for the March 23, 1978 rule. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1981 rates shown in § 170.20 of this Part. These rates and any ceilings on fees or charges will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. Applicants, licensees and others will be given credit for the paid application fee at the time the first bill is issued for that application and on subsequent bills, if necessary, until the full amount of the remitted application fee has been credited. In the event a review covers a combination of licensing actions in a one-step licensing process such as a combined construction permit and operating license review (interim, temporary, or other), the fees charged will be the total of the costs for the licensing action.

³ The amount shown represents the maximum that may be charged for each licensed unit during a one-year period. Inspections covered by this schedule are both routine and nonroutine safety and safeguards inspections performed by NRC for the purposes of reviewing a licensed program, but exclude investigations performed by the NRC Office of Investigations. These inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, Commission regulations, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

⁴ No ceilings are provided because these areas have not been active review areas to the extent that the Commission has a basis to determine an upper limit, or in the case of nonroutine inspections no ceilings are provided because the level of effort to conduct the inspection is determined on the basis of the safety significance and threat to the public health and safety. Fees assessed will be determined based on professional staff time required to complete the review or conduct the inspection multiplied by the rates shown in § 170.20 of this part, to which any appropriate contractual support services cost incurred will be added.

⁵ The amount shown represents the maximum that may be charged for each plant site during a one-year period. The charges will be based on the expenditures for professional staff time and appropriate contractual support services.

§§ 170.22 through 170.24 (Removed)

8. Sections 170.22 through 170.24 are removed.

9. Section 170.31 is revised to read as follows:

* Corrected by adding "a" before the word "specific."

** or
*** has

§ 170.31 Schedule of fees for materials licenses and other regulatory services.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay the following fees:

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES

Category of materials licenses and type of fee ¹	Fee ²
1. Special nuclear material:	
A. Licenses for possession and use of 5 kg or more of contained uranium 235 in uranium enriched to 20 pct or more, or 2 kg or more of uranium 233, for fuel processing and fabrication: ³	
Application	\$150
License	Full cost
Renewal	\$140,600
Amendment	\$170,000
B. Licenses for possession and use of 5 kg or more of contained uranium 235 in uranium enriched to less than 20 pct for fuel processing and fabrication: ³	
Application	\$150
License	Full cost
Renewal	\$140,600
Amendment	\$138,000
C. Licenses for possession and use of 2 kg or more of plutonium for fuel processing and fabrication: ³	
Application	\$150
Construction approval and license	Full cost
Renewal	Full cost
Amendment	Full cost
D. Licenses for possession and use of 5 kg or more of contained uranium 235 in unsealed form, or 2 kg or more of uranium 233, in unsealed form for activities other than fuel processing and fabrication: ³	
Application	\$150
License	Full cost
Renewal	\$52,200
Amendment	\$63,800
E. Licenses for possession and use of quantities of plutonium of 2 kg or more in unsealed form for activities other than fuel processing and fabrication: ³	
Application	\$150
License	Full cost
Renewal	\$52,200
Amendment	\$46,400
F. Licenses for possession and use of 200 g but less than 2 kg of plutonium in unsealed form: ³	
Application	\$150
License	Full cost
Renewal	\$52,200
Amendment	\$46,400
G. Licenses for possession and use of 350 g but less than 5 kg of contained uranium 235 in unsealed form or 200 g but less than 2 kg of uranium 233 in unsealed form: ³	
Application	\$150
License	Full cost
Renewal	\$20,300
Amendment	\$40,600
H. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI): ⁴	
1. License for receipt and storage of spent fuel where the ISFSI is to be located at a new site:	
Application	\$150
License	Full cost
Renewal	Full cost
Amendment	Full cost
2. License for receipt and storage of spent fuel where the ISFSI is to be located at the site of an existing nuclear facility: ⁴	
Application	\$150
License	\$405,200
Renewal	Full cost
Amendment	Full cost

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

Category of materials licenses and type of fee ¹	Fee ²
I. Applications to terminate fee Category 170.31 1A through 1H licenses and to authorize decommissioning, decontamination, reclamation or site restoration activities as well as licenses authorizing possession only: ³	
Application	\$150
License	Full cost
Renewal	Full cost
Amendment	Full cost
J. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems: ⁴	
Application-New license	\$230
Renewal	\$120
Amendment	\$60
K. 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 rate as that for Category 1G:	
Application-New license	\$350
Renewal	\$350
Amendment	\$120
2. Source material:	
A. Licenses for possession and use of source material and byproduct waste material from milling operations, except in in-situ leaching and heap-leaching operations, ore-buying stations, ion-exchange facilities, and the processing of ores containing source material for extraction of metals: ³	
Application	\$150
License	\$341,000
Renewal	\$105,400
Amendment	\$44,000
B. Licenses for processing and recovery of source material in in-situ leaching operations or heap-leaching operations and possession of byproduct waste material from in-situ or heap leach operations: ³	
Production scale activity, except heap leach:	
Application	\$150
License	\$258,000
Renewal	\$13,000
Amendment	\$43,000
In-situ research and development scale activity and heap-leaching operations:	
Application	\$150
License	\$54,200
Renewal	\$31,100
Amendment	\$22,000
C. Licenses for refining uranium mill concentrates to uranium hexafluoride: ³	
Application	\$150
License	Full cost
Renewal	\$140,600
Amendment	\$103,200
D. Licenses for possession and use of source material in ore buying stations, ion-exchange facilities and the 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: ³	
Application	\$150
License	Full cost
Renewal	\$22,000
Amendment	\$11,000
E. Applications to terminate fee Category 170.31 2A through 2D licenses and to authorize decommissioning, decontamination, reclamation or site restoration activities or the possession and maintenance of a facility in a standby mode: ³	
Application	\$150

SCHEDULE OF FEES FOR MATERIALS LICENSES
AND OTHER REGULATORY SERVICES—Con-
tinued

Category of materials licenses and type of fee ¹	Fee ²
License.....	Full cost.
Amendment.....	Full cost.
Renewal.....	Full cost.
F. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):	
Application-New license.....	\$60.
Renewal.....	\$60.
Amendment.....	\$60.
G. All other source material licenses:	
Application-New license.....	\$350.
Renewal.....	\$230.
Amendment.....	\$120.
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 to licensees:	
Application-New license.....	\$1,200.
Renewal.....	\$700.
Amendment.....	\$120.
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 to licensees:	
* Application-New license.....	\$460.
Renewal.....	\$460.
Amendment.....	\$120.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application-New license.....	\$1,400.
Renewal.....	\$1,400.
Amendment.....	\$230.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application-New license.....	\$700.
Renewal.....	\$700.
Amendment.....	\$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):	
Application-New license.....	\$230.
Renewal.....	\$170.
Amendment.....	\$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:	
Application-New license.....	\$580.
Renewal.....	\$350.
Amendment.....	\$230.
*** 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:	
Application-New license.....	\$2,300.
Renewal.....	\$930.
Amendment.....	\$230.

* licenses

** use

*** use

SCHEDULE OF FEES FOR MATERIALS LICENSES
AND OTHER REGULATORY SERVICES—Con-
tinued

Category of materials licenses and type of fee ¹	Fee ²
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.....	\$580.
Renewal.....	\$230.
Amendment.....	\$120.
I. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing 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.....	\$290.
Renewal.....	\$230.
Amendment.....	\$60.
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 Parts 31 or 35 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Parts 31 or 35 of this chapter:	
Application-New license.....	\$1,200.
Renewal.....	\$700.
Amendment.....	\$230.
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 or 35 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Parts 31 or 35 of this chapter:	***
Application-New license.....	\$290.
Renewal.....	\$230.
Amendment.....	\$60.
L. License 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.....	\$1,200.
Renewal.....	\$700.
Amendment.....	\$120.
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.....	\$700.
Renewal.....	\$460.
Amendment.....	\$120.
N. Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services:	
Application-New license.....	\$930.
Renewal.....	\$930.
Amendment.....	\$120.

**** licenses

***** license

SCHEDULE OF FEES FOR MATERIALS LICENSES
AND OTHER REGULATORY SERVICES—Con-
tinued

Category of materials licenses and type of fee ¹	Fee ²
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application-New license.....	\$700.
Renewal.....	\$700.
Amendment.....	\$230.
P. All other specific byproduct material licenses, except those in categories 4A through 9D:	
Application-New license.....	\$230.
Renewal.....	\$120.
Amendment.....	\$60.
4. Waste disposal:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors, or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material: ³	
Application.....	\$150.
License.....	\$803,700.
Renewal.....	\$285,600.
Amendment.....	\$45,400.
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.....	\$1,400.
Renewal.....	\$930.
Amendment.....	\$350.
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.....	\$930.
Renewal.....	\$460.
Amendment.....	\$120.
5. Well logging:	
A. Licenses specifically authorizing 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.....	\$700.
Renewal.....	\$700.
Amendment.....	\$170.
B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:	
Application.....	\$150.
License.....	Full cost. ³ *****
Renewal.....	Full cost. ³
Amendment.....	Full cost. ³
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.....	\$700.
Renewal.....	\$700.
Amendment.....	\$170.
7. Human use of byproduct, source, or special nuclear material:	

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Con- tinued

Category of materials licenses and type of fee ¹	Fee ²
A. Licenses issued pursuant to Parts 30, 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	\$580.
Renewal	\$350.
Amendment	\$230.
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	\$1,200.
Renewal	\$700.
Amendment	\$120.
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	\$580.
Renewal	\$580.
Amendment	\$120.
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	\$290.
Renewal	\$230.
Amendment	\$60.
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	\$1,600.
Amendment—each device	\$580.
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	\$800.
Amendment—each device	\$290.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	\$350.
Amendment—each source	\$120.
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	\$175.
Amendment—each source	\$60.

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Con- tinued

Category of materials licenses and type of fee ¹	Fee ²
10. Transportation of radioactive material:	
A. Evaluation of spent fuel cask equal to or greater than 20 kW decay heat:	
Application	\$150.
Approval	\$184,000. ³
Renewal	\$1,400. ³
Amendment	\$43,000. ³
B. Evaluation of spent fuel cask for less than 20 kW decay heat; air shipping package for plutonium, high-level waste casks; and packages containing radioactive material equal to or greater than 2,000 times the type A quantity⁴:	
Application	\$150.
Approval	\$143,000. ³
Renewal	\$1,400. ³
Amendment	\$43,000. ³
C. Evaluation of fissile packages containing greater than type A quantities of radioactive material or packages containing radioactive material less than 2,000 times the type A quantity⁴:	
Application	\$150.
Approval	\$65,000. ³
Renewal	\$900. ³
Amendment	\$32,000. ³
D. Evaluation of fissile packages containing less than type A quantities of radioactive material or packages containing radioactive material less than 200 times the type A quantity⁴:	
Application	\$150.
Approval	\$43,000. ³
Renewal	\$900. ³
Amendment	\$18,000. ³
E. Evaluation of packages containing radioactive material less than 20 times the type A quantity⁴:	
Application	\$150.
Approval	\$27,000. ³
Renewal	\$900. ³
Amendment	\$18,000. ³
F. Evaluation of Part 71 Quality Assurance Programs:	
Application	\$150.
Approval	Full Cost. ³
Renewal	Full Cost. ³
Amendment	Full Cost. ³
11. Review of standardized spent fuel facilities:	
Application	\$150.
Approval	Full Cost. ³
Amendment	Full Cost. ³
12. Special projects:	
Application	\$150.
Approval:	
1. Topical Reports	\$20,000.
2. Amendments, Revisions and Supplements to topical reports	\$20,000.
3. Transportation route approvals	Full Cost. ³
4. All other Reports, Special Projects and Amendments except those specified in 1, 2, and 3 above.	Full Cost. ³

¹ Types of fees—Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals. The following guidelines apply to these charges:

(a) Application fees—Applications for materials licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material (excluding category 1H) or source material to be used at the same location, must be accompanied by the prescribed application fee for the highest fee category. When a license or approval has expired, the application fee for each category shall be due, except for licenses covering more than one fee category of special nuclear material (excluding category 1H) or source material for use at the

same location, in which case the application fee for the highest category applies.

(b) License/approval fees—For new licenses and approvals issued in fee categories 1A through 1H, 2A through 2E, 4A, 5B, 10A through 10F, 11 and 12, the recipient shall pay the license or approval fee for each category, as determined by the Commission in accordance with § 170.12(b), (e), and (f), except that a license covering more than one fee category of special nuclear material in categories 1A through 1G or source material in fee categories 2A through 2E must pay a license fee for the highest fee category assigned to the license.

(c) Renewal fees—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee categories 1A through 1I, 2A through 2E, 4A, 5B, 10A through 10F, 11, and 12 must be accompanied by an application fee of \$150, and the additional renewal fee shall be due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) Amendment fees—Applications for amendments must be accompanied by the prescribed amendment fee for each category, unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that applications for amendment of licenses in fee categories 1A through 1I, 2A through 2E, 4A, 5B, 10A through 10F, 11, and 12 must be accompanied by an application fee of \$150 with the balance due upon notification by the Commission in accordance with § 170.12(c). An application for amendment to a material's 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, except for an application for amendment to increase the scope of a licensed program in fee categories 1A through 1I, 2A through 2E, and 10A through 10F, ~~which case~~ the licensee shall pay the application fee of \$150, and the license or approval fee for the higher fee category shall be due upon completion of the licensing review.

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, except in fee categories 1A through 1I, 2A through 2E, and 10A through 10F, in which case the licensee shall pay an application fee of \$150, and the license or approval fee for the lower fee category shall be due upon completion of the licensing review. Application to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fees.

³ Fees will not be charged ~~on~~ orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from 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., § 30.11, 40.14, 70.14, 73.5, and any other such 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.

⁴ The amounts shown for new licenses, renewals, amendments, approvals and special projects are the maximum fees that may be assessed for an application. Fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application. For those reviews 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 and billed for that time will be at the professional rates established for the March 23, 1978 rule. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1981 rates shown in § 170.20 of this part. Those rates will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. In no event will the total review costs be less than the application fee.

⁵ Fees would be applicable only in those instances where a site safety and environmental review had been performed and documented by the Commission for the site at which the storage facility is to be located.

⁶ Licensees paying fees under Categories 1A through 1I are not subject to fees under Categories 1J and 1K 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 1J only.

⁷ A type A quantity is defined in § 71.4(q) of 10 CFR Part 71.

10. Section 170.32 is revised to read as follows:

* in which case

** for

*** those

§ 170.32 Schedule of fees for health and safety, and safeguards inspections for materials licenses.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES

Category of licenses	Type of inspection ¹	Fee ²	Maximum frequency ³
1. Special nuclear material:			
A. Licenses for possession and use of five (5) kg or more of contained uranium 235 in uranium enriched to 20 pct. or more, or two (2) kg or more of uranium 233, for fuel processing and fabrication.	Routine	\$120,000*	Per year
	Nonroutine	Full cost*	
B. Licenses for possession and use of five (5) kg or more of contained uranium 235 in uranium enriched to less than 20 pct. for fuel processing and fabrication.	Routine	\$35,300*	Do.
	Nonroutine	Full cost*	
C. Licenses for possession and use of two (2) kg or more of plutonium for fuel processing and fabrication.	Routine	\$70,500*	Do.
	Nonroutine	Full cost*	
D. Licenses for possession and use of five (5) kg or more of contained uranium 235 in unsealed form, or two (2) kg or more of uranium 233 in unsealed form for activities other than fuel processing and fabrication.	Routine	\$21,200*	Do.
	Nonroutine	Full cost*	
E. Licenses for possession and use of quantities of plutonium of two (2) kg or more in unsealed form for activities other than fuel processing and fabrication.	Routine	Full cost*	Do.
	Nonroutine	Full cost*	
F. Licenses for possession and use of 20 g but less than two (2) kg of plutonium in unsealed form.	Routine	Full cost*	Do.
	Nonroutine	Full cost*	
G. Licenses for possession and use of 350 g but less than five (5) kg of contained uranium 235 in unsealed form, or 200 g but less than two (2) kg of uranium 233 in unsealed form.	Routine	\$47,200*	Do.
	Nonroutine	Full cost*	
H. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):			
1. Licenses for receipt and storage of spent fuel where the ISFSI is to be located at a new site.	Routine	\$16,500*	Do.
	Nonroutine	Full cost*	
2. Licenses for receipt and storage of spent fuel where the ISFSI is to be located at the site of an existing nuclear facility.	Routine	\$16,500*	Do.
	Nonroutine	Full cost*	
I. Licenses authorizing decommissioning, decontamination, reclamation or site restoration activities as well as licenses authorizing possession only.	Routine	Full cost*	
	Nonroutine	Full cost*	
J. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems.	Routine	\$210	1 per 7 years.
	Nonroutine	\$640	Per inspection.
K. 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 § 170.11 of this chapter for which the licensee shall pay the same rate as that for category 1G.	Routine	\$320	1 per 2 years.
	Nonroutine	\$370	Per inspection.
2. Source material:			
A. Licenses for possession and use of source material and possession of byproduct waste material from milling operations, except in in-situ leaching and heap-leaching operations, ore-buying stations, ion-exchange facilities, and the processing of ores containing source material for extraction of metals.	Routine	\$2,300	1 per year.
	Nonroutine	Full cost*	
* B. Licenses for possession and recovery of source material in in-situ leaching operations or heap-leaching operations, and possession of byproduct waste material from in-situ or heap leach operations.	Routine	\$1,000	Do.
	Nonroutine	Full cost*	
C. Licenses for refining uranium mill concentrates to uranium hexafluoride.	Routine	\$2,300	Do.
	Nonroutine	Full cost*	
D. Licenses for possession and use of source material in ore-buying stations, ion-exchange facilities and the 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.	Routine	\$1,300	1 per year.
	Nonroutine	\$650	Per inspection.
E. Licenses authorizing decommissioning, decontamination, reclamation or site restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	Routine	Full cost*	
	Nonroutine	Full cost*	
F. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8).	Routine	\$130	1 per 7 years.
	Nonroutine	\$160	Per inspection.
G. All other source material licenses.	Routine	\$370	1 per 7 years.
	Nonroutine	\$690	Per inspection.
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 to licensees.	Routine	\$950*	1 per year.
	Nonroutine	\$1,000*	Per inspection.
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 to licensees.	Routine	\$480*	1 per year.
	Nonroutine	\$900*	Per inspection.
C. Licenses issued pursuant to §§ 32.72, 32.73 and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material.	Routine	\$640	1 per 2 years.
	Nonroutine	\$850	Per inspection.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73 and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material.	Routine	\$370	1 per 2 years.
	Nonroutine	\$530	Per inspection.
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).	Routine	\$210	1 per 3 years.
	Nonroutine	\$320	Per inspection.

* ion-exchange

** processing

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

Category of licenses	Type of inspection ¹	Fee ²	Maximum frequency ³
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.	Routine.....	\$270	1 per year.
	Nonroutine.....	\$580	Per inspection.
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.	Routine.....	\$480	Do 1 per year.
	Nonroutine.....	\$640	Do Per inspection.
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.	Routine.....	\$320	1 per 3 years.
	Nonroutine.....	\$320	Per inspection.
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 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.	Routine.....	\$210	Do 1 per 3 years.
	Nonroutine.....	\$320	Do Per inspection.
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 Parts 31 or 35 of this chapter, except specific licenses authorizing redistribution to persons generally licensed under Parts 31 or 35 of this chapter.	Routine.....	\$320	Do 1 per 3 years.
	Nonroutine.....	\$320	Do Per inspection.
* 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 or 35 of this chapter, except specific licenses authorizing redistribution to persons generally licensed under Parts 31 and 35 of this chapter.	Routine.....	\$320	Do 1 per 3 years.
	Non-routine.....	\$320	Do Per inspection.
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.	Routine.....	\$420	Do 1 per 3 years.
	Non-routine.....	\$530	Do Per inspection.
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.	Routine.....	\$370	Do 1 per 3 years.
	Non-routine.....	\$420	Do Per inspection.
N. Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services.	Routine.....	\$320	1 per 7 years.
	Non-routine.....	\$320	Per inspection.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations.	Routine.....	\$530 *	1 per year.
	Non-routine.....	\$1,200 *	Per inspection.
** P. All other specific by product material licenses, except those in categories 4A through 9D.	Routine.....	\$530	1 per 3 years.
	Non-routine.....	\$530	Per inspection.
4. Waste disposal:			
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low-level radioactive wastes at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues, resulting from incineration, and transfer of packages to another person authorized to receive or dispose of waste material.	Routine.....	Full cost *	
	Non-routine.....	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.	Routine.....	\$1,000	1 per year.
	Non-routine.....	\$740	Per inspection.
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.	Routine.....	\$740	1 per 2 years.
	Non-routine.....	\$950	Per inspection.
5. Well logging:			
A. Licenses specifically authorizing 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.	Routine.....	\$370	1 per 3 years.
	Non-routine.....	\$370	Per inspection.
B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies.	Routine.....	\$320	1 per 2 years.
	Non-routine.....	\$480	Per inspection.
6. Nuclear laundries:			
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	Routine.....	\$530	1 per 3 years.
	Non-routine.....	\$850	Per inspection.
7. Human use of byproduct, source, or special nuclear material:			
A. Licenses issued pursuant to Parts 30, 40, and 70 of this chapter for human use of by product material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine.....	\$530	1 per 2 years.
	Non-routine.....	\$850	Per inspection.

* items

** material

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

Category of license	Type of inspection ¹	Fee ²	Maximum frequency ³
B. Licensees 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.	Routine	\$740	1 per 2 years. Per inspection.
	Non routine	\$800	
C. Other licensees 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.	Routine	\$430	1 per 3 years. Per inspection.
	Non routine	\$590	
E. Civil defense: Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	Routine	\$320	1 per 7 years. Per inspection.
	Non routine	\$320	
9. Device, product, or sealed source safety evaluation: Safety evaluation of devices, products or sealed sources containing byproduct, source, or special nuclear material, except reactor fuel.	No inspections conducted		
10. Transportation of radioactive material: Evaluation of spent fuel casks, packages, and shipping containers.	do		
11. Review of standardized spent fuel facilities	do		
12. Special projects	do		

¹ Types of inspections—Separate charges as shown in this schedule will be assessed for each routine and non-routine inspection which is performed, except those investigations conducted by the Office of Investigations. Non-routine inspections that result from third-party allegations will not be subject to fees.

² 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, except in cases when the inspection fees are based on the full cost to conduct the inspection.

³ The frequency shown in the schedule is the maximum number for each routine inspection for which a fee will be assessed, except for licenses in fee categories 1A through 1D, 1G and 1H for which the fee shown in the schedule will be the maximum fee assessed per year. Fees for non-routine inspections will be assessed on a per inspection basis.

⁴ The amounts shown are the maximum charges that may be assessed for inspections conducted. The fees assessed will be determined based on the professional staff time required to conduct the inspection multiplied by the rates shown in § 170.20 of this part, to which any appropriate contractual support service costs incurred will be added. These rates will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. Where no ceiling is specified the fee assessed will be based on full cost.

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

11. Section 170.41 is revised to read as follows:

§ 170.41 Failure by applicant or licensee to pay prescribed fees.

In any case where the Commission finds that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee or may issue an order with respect to licensed activities as the Commission determines to be appropriate or necessary in order to carry out the provisions of this part, Parts 30, 32 through 35, 40, 50, 61, 70, 71, 72, and 73 of this Chapter, and of the Act.

12. A new § 170.51 is added to read as follows:

§ 170.51 Right to Review and Appeal of Prescribed Fees.

All debtors' requests for review of the fees assessed and appeal or disagreement with the prescribed fee (staff hours and contractual) must be submitted in accordance with the provisions of 10 CFR 61.31, "Disputed * Debts," of this title.

Dated at Washington, D.C., this 15th day of May, 1984.

* 15.31

For the Nuclear Regulatory Commission.

Samuel Chik,

Secretary of the Commission.

[FR Doc. 84-13517 Filed 5-17-84; 8:45 am]

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