

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1999, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1999 is approximately \$449.6 million.

EFFECTIVE DATE: (60 days after publication in the Federal Register.)

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6057.

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I. Background

OBRA-90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE)

administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy were excluded from the fee recovery requirement for FY 1999 by the FY 1999 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established at 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees. The NRC published a proposed rule that presented the amendments to Parts 170 and 171 necessary to comply with OBRA-90 for FY 1999 on April 1, 1999 (64 FR 15876).

II. Responses to Comments

A total of thirty-four comments were received on the proposed rule. Although the comment period ended on May 3, 1999, the NRC evaluated the 26 comments which were received by the close of business on May 5, 1999. The NRC was unable to consider the eight comments received after May 5, 1999, as they were not received in sufficient time for the NRC staff and the Commission to evaluate them fully in the limited period available for preparing a final rule in this expedited rulemaking proceeding. In any event, a cursory review of those late comments did not reveal any substantive new issues.

Many of the comments were similar. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

A. Legal Issues.

Several commenters raised questions about NRC's legal interpretation of OBRA-90 and the IOAA. These comments are addressed first because their resolution establishes the framework for addressing subsequent issues raised by commenters.

The commenters attempted to present a balanced view of the proposed fee schedule, and even applauded the NRC's "considerable effort over the past year to reduce inefficiencies through strategic planning and reorganizations." Nonetheless, it is abundantly clear that most commenters believe that the NRC has a long way to go to reach a truly fair and equitable system of fee allocation. Several commenters asserted that the NRC lacks the legal authority to set fees in accordance with the proposed fee schedule. These commenters challenged the agency's interpretation of the statutes underpinning NRC's fee collection proposal. These same questions have been raised since the inception of the 100 percent fee collection requirement in 1991. The Commission has consistently interpreted its statutory mandate, but in the face of continuing complaints, the Commission will again address the concerns raised by commenters.

1. Comment. Comments submitted by or on behalf of commercial nuclear power reactors, the uranium recovery industry, and a materials licensee expressed serious

concern over inequities caused by the statutory mandate that NRC collect an annual charge from licensees aggregating approximately 100 percent of the budget authority for the fiscal year, less fees collected under Part 170 and any amount appropriated from the Nuclear Waste Fund or the General Fund. These commenters are particularly distressed at having to absorb charges in their annual fees for activities that do not directly benefit them, such as international activities, Agreement State oversight and regulatory support, activities for other Federal agencies, and fee reductions or exemptions for small entities and nonprofit educational institutions. One commenter, speaking on behalf of several commercial power reactors, questioned the NRC's legal and constitutional authority to impose these charges. The commenter did not believe the 100 percent budget recovery requirement could be reconciled with OBRA-90, which requires that annual fees bear a reasonable relationship to the cost of regulatory services and to be fairly and equitably allocated among licensees.

Commenters concluded that the desired relief for this problem can come only by legislative changes to OBRA-90 to relax the 100 percent budget recovery requirement so that certain costs can be removed from the fee base. They remained hopeful that the desired relief may be forthcoming in spite of their awareness that the Administration has not supported such a relaxation. In some cases, however, commenters perceived that the NRC has alternatives it is not using, such as charging Agreement States for services provided. In addition, they insisted that the NRC should recover these types of costs through General Funds appropriations from the Congress. In their view, when all else fails, the NRC must simply discontinue the "unfunded" program rather than pass along these costs to the licensees. These commenters asserted that this becomes particularly necessary in today's era of utility deregulation because reactor licensees' ability to pass through costs to their customers has been reduced.

One commenter maintained that the NRC has the authority to charge other Federal agencies Part 170 fees. Another commenter went so far as to say that the NRC is not at liberty to relieve anyone from paying fees for associated services, i.e., to grant exemptions from user fees because, under OBRA-90, Congress directed NRC to recover its costs by collecting fees from "any person who receives a service or thing of value." This commenter maintained that there was no exemption authority for this requirement, relying on the definition of "person" under the Atomic Energy Act to argue not only that the NRC has authority to impose charges for these types of activities, but also that it is compelled to charge the recipients for them. Thus, it would have the NRC recover Agreement State oversight and support costs through fees assessed on the Agreement States or their licensees. The commenter also stated that costs of international activities should be recovered through fees imposed on the Department of State; that other Federal agency licensing and inspection charges should be assessed against the regulated Federal agency; that small entities and nonprofit educational institutions should not be relieved of fees for the costs associated with them; and that either a General Fund appropriation should be sought to recover those expenses or they should pay their own costs. Other commenters also advocated these proposals.

In support of these arguments, commenters charged that OBRA-90 does not permit charging licensees for programs not directly related to the licensees charged, that the surcharge imposed to recover these costs is unlawful, unfair, arbitrary, and discriminatory. These commenters charged that OBRA-90 is unconstitutional in that it denies reactor licensees equal protection under the due process clause of the Constitution and constitutes an unfair taking of property without just compensation. They believed, uniformly, that the surcharge bears no relation to services or benefits to the licensees against whom it is assessed and that these costs should be recovered from the beneficiaries. Commenters cited the reduced ability

of reactor licensees to pass through costs to their ultimate customers in an era of utility deregulation and reasserted their view that power reactor licensees should only be assessed for programs of direct relevance to them.

Response. OBRA-90 requires that the sum total of annual charges NRC collects from its licensees equal approximately 100 percent of NRC total budget authority for each fiscal year, less fees assessed under the IOAA and amounts appropriated to NRC from the Nuclear Waste Fund. The NRC is expected to establish a schedule of annual charges that fairly and equitably allocates this amount among licensees and reasonably reflects the costs of providing services to licensees or classes of licensees, to the maximum extent practicable. This means that the NRC must promulgate each fiscal year a fee schedule that is as fair and equitable as can be achieved, given the other constraints with which it is faced. The NRC does not have discretion to assess less than this amount, as several commenters suggested. The costs of services that do not directly benefit licensees must be recovered under our current statutory mandate.

In the Statement of Considerations for the 1991 final fee rule the Commission concluded that the Congressional intent behind the requirement to collect "approximately 100 percent" of its budget was for the NRC to identify and allocate as close as possible to 100 percent of its budget authority to the various classes of NRC licensees. The NRC has historically interpreted this requirement as referring to the inherent uncertainties in estimating and collecting fees, such that additional fees would not need to be collected in case of shortfall, nor refunds necessarily made in case of over collection. (See 56 FR 31472, 31473; July 10, 1991).

Moreover, the Conference Report for OBRA-90 specifically acknowledged the fact that there would be certain "expenses that cannot be attributed either to an individual licensee or a class of licensees." The NRC is expected to

fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributable to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

H.R. Conf. Rep. No. 101-964, at 963, reprinted in 1990 U.S.C.C.A.N. 2374, 2668. Thus, Congress has directed that licensees, of necessity, will have to pay for some of the expenses that are not generated by efforts directly on their behalf, regrettable as that may be. While every effort is made to impose such costs equitably, there is one controlling requirement which is inflexible: the NRC must set its schedule so that it can recoup approximately 100 percent of its budget authority, less the amounts it properly may recover from other areas, such as charges for services (IOAA fees) and Nuclear Waste Fund Appropriations. In order to meet that mandate, the NRC has been forced to assess fees to licensees to recover the costs of certain types of activities that, while not necessarily directly benefitting the licensees charged, leave no other means to be recovered. This includes functions such as services provided to other Federal agencies, Agreement State oversight and international activities. It is understandable that licensees who absorb the impact of these charges will object to them and wish to be relieved of them. However, their arguments overlook an important qualifier in the standard: namely, "to the maximum extent practicable." That is, when Congress enacted this admittedly rigorous requirement, it was aware of the fact that there would be certain costs that

would not be susceptible to recovery as others were. The Congress still has not relieved the NRC from the onus of the collection requirement. Certain expenses cannot be attributed to an individual licensee or class of licensees but may be recovered from licensees who can fairly, equitably, and practicably contribute to payment.

The NRC can readily explain why these costs are spread to agency licensees as part of a fee "surcharge." The NRC lacks the legal authority to assess IOAA charges against Federal agencies (other than the Tennessee Valley Authority). The IOAA states, in pertinent part, "[E]ach service or thing of value provided by an agency . . . to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible." A "person on official business of the United States Government" has long been construed to mean a Federal agency. This construction indicates that the NRC requires separate Congressional authorization in order to override this provision and lawfully impose fees on other Federal agencies. For example, in light of this language, section 161w. of the Atomic Energy Act was enacted in 1972 to allow the NRC to impose Part 170 fees on the Tennessee Valley Authority. Section 161w. was further amended in 1992 to include the United States Enrichment Corporation, prior to its privatization. Had the NRC's statutory mandate included the authority to impose fees on all Federal agencies, this legislation would have been unnecessary. The NRC believes it should be granted the authority to charge other Federal agencies for services rendered and recently submitted to Congress, as a provision in its proposed FY 2000 authorization bill, an amendment to section 161w. which would provide the authority to impose Part 170 fees on all Federal agencies.

Similarly, the NRC lacks the authority to impose annual fees on the Agreement States and their licensees because OBRA-90 permits the assessment of annual fees only on NRC licensees. The Agreement States and their licensees are not "NRC licensees." The NRC also

has made policy decisions not to assess fees on nonprofit educational institutions in order to further the public good and to limit the fees assessed on small businesses in accordance with the policies underlying the Regulatory Flexibility Act. Under the circumstances, it is understandable that a substantial portion of these costs are recovered through annual fees imposed on power reactors. A large percentage of the NRC's budget is devoted to the regulation of power reactors. Accordingly, a large portion of the annual fee must be borne by these licensees.

The commenters suggested that, in the absence of such legislation, the NRC should not perform the activities encompassed within the annual fee surcharge. The Commission is not prepared to eliminate these important functions that help assure the public health and safety and the common defense and security without a clear statutory directive from the Congress. Thus, a legislative solution to the fee recovery requirement is required to eliminate the concerns raised by the commenters. Over the years, the NRC has had limited success in obtaining fee legislation that would reduce the burdens on its licensees by having some or all of NRC expenses in these areas obtained through appropriations from the General Fund.

While the Commission continues to support legislative relief, absent such relief the Commission has limited ability to remedy any inequities in its fee structure because it is required to collect approximately 100 percent of its budget in fees. The NRC has taken several actions within existing fee laws to address concerns regarding its fee structure:

1. The NRC identified fairness and equity concern categories in its February 1994 Report to Congress on NRC Fee Policy and indicated that legislation was necessary to address these concerns. The recommended legislation has not been enacted.

2. In FY 1995, the NRC acted under existing fee laws to help to mitigate the fairness and equity concerns by treating costs for activities that do not directly benefit NRC licensees similar to overhead and distributing the costs to the broadest base of NRC licensees.

3. The NRC established a policy to obtain reimbursement for services provided to other Federal agencies when such reimbursements are authorized by law.

4. The NRC obtained appropriation legislation that removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy.

5. The NRC took actions to shift cost recovery for certain activities from Part 171 annual fees to Part 170 specific fees for services.

6. As part of its FY 2000 authorization bill, the NRC is seeking an amendment to section 161w. of the Atomic Energy Act to provide the authority to impose Part 170 fees on all other Federal agencies.

In sum, the Commission believes that the fee schedules it is promulgating in this final rule satisfy all legal requirements and do not deprive any licensee of its constitutional rights.

2. Comment. One commenter said that the basis for annual fees for operating reactors should be megawatt generation capability instead of the proposed fixed flat annual fee. This commenter argued that the proposed fee structure placed a disproportionate burden on

the ratepayers of utilities with small reactors and resulted in a competitive disadvantage to those reactors.

Response. OBRA-90 requires that annual fees have a reasonable relationship to the expenditure of Commission resources. No available data demonstrates that the Commission expends fewer resources on reactors with lower generation capacity than it does on facilities with greater generation capability. Furthermore, Commission services are not allocated on the basis of megawatt generation capability. Because there is no relationship between generic costs and generation capacity, there is no legal basis for charging annual fees based on megawatt generation capability.

3. Comment. One commenter said that the NRC should designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The NRC should then refund the higher fees collected for the last two years from all 8(a) firms. The commenter further requested that the NRC change its definition of small entity for environmental remediation service companies to conform to the SBA's revised size standards, which now categorize such companies with fewer than 500 employees as "small entities."

Response. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than \$5 million in average annual gross revenues over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or

fewer employees during the preceding 12-month period would qualify as small entities (10 CFR 2.810). The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry.

The Commission will further consider the issue raised by this commenter regarding its designation of small entities for reduced fee purposes, and will separately address the commenter's request for a partial annual fee exemption.

4. Comment. A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1999. One commenter stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived at its proposed fee schedules.

Response. The NRC believes it has provided sufficient information concerning its proposed fee schedule to allow effective evaluation and constructive comment on the proposed rule. In Part II of the Statement of Considerations supporting the proposed rule, the NRC provided a detailed explanation of the FY 1999 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC work papers pertinent to the development

of the fees to be assessed were placed in the Public Document Room (PDR) on April 1, 1999, on the first day of the public comment period. These work papers provide additional information concerning the development and calculation of the fees, including NRC's FY 1999 budgeted resources at the subactivity level for the agency's major programs. The NRC has also made NUREG-1100, Vol.14, "Budget Estimates, Fiscal Year 1999" (Feb. 1998), which discusses in detail NRC's budget for FY 1999 available in the PDR. In addition, NRC staff always makes itself available either to meet with interested parties in person, or to respond to telephone inquiries to explain its fee schedules.

B. Specific Comments - Part 170.

1. Expand the scope of Part 170.

Comment. The NRC received twelve comments on the proposal to expand the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals, and full cost recovery for time expended by Project Managers (PMs), except leave time and time spent on generic activities such as rulemaking.

Many of those commenting on this issue opposed full cost recovery for PMs. Several uranium recovery licensees commented that, coupled with the proposed increase in the hourly rate to be assessed for NRC staff review time, the proposed change could double Part 170 fee assessments, an increase that would be extremely burdensome to licensees. One commenter indicated that billing for all of a PM's time would reduce necessary communication, such as phone calls, between the NRC and the licensees. This commenter also objected to licensees

being required to pay for the time a PM spends to become familiar with a site. A similar comment was received from a reactor licensee who, although not specifically indicating opposition to the proposal, stated that Part 170 fees should not be assessed for PM or resident inspector time spent in training or other administrative tasks not directly associated with the licensee. One commenter indicated that the licensees paying for the PM time have little or no input over what the PM is reviewing. A power reactor commenter supported full cost recovery for PMs only if work priorities were mutually agreed upon by NRC and the licensee.

Several of the uranium recovery commenters also questioned the amount of time spent by PMs and other NRC staff in reviewing licensee submittals. They indicated that, in many cases, the amount of time spent on uranium recovery issues appears to be excessive in light of what they characterize as the low level of risk posed by uranium recovery operations. One uranium recovery commenter stated that the proposal presents the potential for an open-ended escalation of fees that do not directly benefit the licensees.

Other commenters partially or fully supported the proposed expansion of Part 170. The Nuclear Energy Institute (NEI), which primarily represents the commercial nuclear reactor industry, urged the NRC to continue to separate out fees related to a given licensee and assess those fees to the licensee under Part 170. NEI stated that it is inappropriate for one licensee to subsidize, through annual fees, additional agency oversight incurred by another licensee because it is not performing well. Another commenter who supported the proposal recommended that the NRC demonstrate how the expanded Part 170 costs are removed from the Part 171 fee schedule. One power reactor commenter agreed, in part, with shifting cost recovery from annual fees to fees for services. However, the commenter stated, that as more services are billed by the hour, the opportunity for inefficiencies in reviews and billing abuse

becomes greater. This commenter suggested that hourly fees be capped to allow licensees to make budget forecasts.

Another commenter supported the assessment of Part 170 fees for all inspections, stating that the change is expected to lower the costs of inspections for good performers. However, this commenter opposed the proposal to expand Part 170 to include reviews of documents that do not require formal approval. This commenter stated that these documents are submitted in compliance with regulations without an expectation of NRC assistance in assuring compliance, and that licensees should have control over Part 170 charges.

A materials licensee questioned how the proposed additional Part 170 fees would be billed, indicating that if NRC has truly downsized, the expanded scope of Part 170 is not justified.

Response. The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for Project Manager time, except leave time and time spent on generic activities such as rulemaking. Expanding the scope of Part 170 is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in

complying with statutory obligations under the Commission's regulations. Incident investigations, performance assessments and evaluations, reviews of reports and other documents, and PM activities are services which the NRC provides to specific, identifiable recipients. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in the class.

Based on the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget authority through fees, the costs of these services must be paid either by applicants and licensees under Part 170 as fees for services rendered to them or by licensees under Part 171 as annual fees. To calculate the total amount to be assessed in Part 171 annual fees, the estimated amount to be recovered through Part 170 fees in a given fiscal year is subtracted from the total budget authority for that fiscal year. Therefore, if all other things remain equal, increasing the costs to be recovered under Part 170 would shift these costs away from Part 171 annual fees. Although this change may result in increased Part 170 fees assessed to the individual licensees receiving the specific services, the overall fee burden for licensees in that fee class is not increased. It should be noted that because this final rule will become effective after the last quarterly Part 170 billing in FY 1999, the changes will not have an effect on the estimated Part 170 collections for FY 1999 and thus do not affect the FY 1999 annual fees.

As described in the proposed rule, this change will result in the assessment of Part 170 fees to individual licensees to recover the full costs for PMs assigned to their sites, except for PM activities that are of a generic nature, such as rulemaking and preparation of generic guidance documents, and leave time. If a PM is assigned multiple sites, the PM's time that is

not site-specific will be prorated to all of the sites to which he or she is assigned. The NRC acknowledges some commenters' concerns about individual licensees being charged for the time a PM is in training or performing administrative tasks and time for a newly-appointed PM to become familiar with a particular site. However, these types of activities are necessary for the PMs to provide effective oversight for the operation of an assigned site or sites. Therefore, the cost of these activities should be borne by those licensees receiving the benefit of PM services, whether the services are specific licensing and inspection actions, or other duties associated with serving as the agency focal point for oversight of a site or sites. Examples of PM activities that will be billed to the specific site or sites include: discussions with NRC regional employees on specific plant issues; visits to the site(s); scheduling, planning and coordinating work with the technical staff; and answering technical questions.

The NRC disagrees with the suggestion that PM time should be billed only if the work priorities are mutually agreed upon by NRC and the licensee. It would be inappropriate to have entities regulated by the NRC concur in how the agency carries out its regulatory functions related to that specific entity. The agency's work priorities, including those of PMs, are carefully reviewed by NRC management to assure that the appropriate resources are spent to accomplish the agency's health and safety mission. Assessing Part 170 fees to recover the cost of a particular service provided to an individual applicant or licensee does not diminish the requirement for NRC management to carefully balance workload and assigned resources in an efficient and effective manner. This also applies to the suggestions that the NRC staff spends excessive time on reviews and that increasing the scope of Part 170, as proposed, would open the door for inefficiencies in reviews and billing abuses.

The NRC is committed to performing all of its activities as expeditiously and efficiently as possible. This commitment is evidenced by the streamlining and downsizing the agency has accomplished and the resulting budget reductions. In addition, billing for activities under Part 170 provides licensees a greater opportunity to review and challenge specific costs because the charges are individually itemized on the Part 170 bills.

Part 170 fees for these additional activities will be applicable only to those applicants and licensees subject to full cost billing under Part 170. Those materials licensees who hold licenses for which amendment and inspection fees have been eliminated from Part 170 will not be subject to Part 170 fees for these additional activities as they are included in their Part 171 annual fees.

2. Including Orders and Escalated Enforcement Actions in Part 170 in FY 2000.

The NRC solicited public comment on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule.

Comment. Four comments were received on this issue. Two commenters opposed adding these activities to Part 170; one commenter supported their inclusion. The fourth commenter indicated that the direct allocation of these costs to those who receive the services warrants further evaluation and that it would welcome the opportunity to comment on a definitive proposal in the FY 2000 fee rule. This commenter stated that, in addition to being viewed as a penalty upon licensees who exercise their rights to challenge the NRC action, there

are additional implications in situations where the licensee is successful in such a challenge. Another commenter stated that the assessment of Part 170 fees for these actions would result in a "de facto additional civil penalty, and further challenge the economics of operation for that facility." NEI, on the other hand, urged the NRC to continue to assess fees under Part 170 for activities related to a given licensee, and stated that "application of this principle dictates that the industry support assessing fees for escalated enforcement actions under Part 170." NEI went on to say that the perception that these enforcement actions serve as an industry-wide deterrent has not been borne out. One commenter who opposed the assessment of Part 170 fees for these activities stated that the licensees would have to pay fees for pursuing any enforcement action they disagreed with, which could result in a "chilling effect" on challenges to enforcement actions. The commenter also stated that licensees would be required to pay for the review of a violation and corrective actions even if the NRC concludes that full mitigation of a possible civil penalty is appropriate, and potentially would be charged fees when NRC withdraws an enforcement action.

Response. The NRC agrees that there are arguments for and against assessing Part 170 fees for the development of, and evaluation of response to, orders and NOVs accompanying escalated enforcement actions. This issue will be further evaluated prior to promulgation of the FY 2000 fee rule.

3. Eliminate Part 170 Average-cost ("Flat") Amendment Fees.

Comment. The NRC received one comment on its proposal to eliminate the Part 170 fees that are based on the average costs to review amendments ("flat" fees). The

commenter supported the proposed change, stating that it simplifies budgeting and increases efficiency for both the NRC and licensees.

Response. The NRC is amending 10 CFR 170.31 to eliminate the flat amendment fees for materials licensees. This change streamlines the NRC process and eliminates any delays in processing these amendments due to incorrect payments. The NRC believes that, as the commenter indicated, this change will also be more efficient for licensees. This change will result in an estimated \$900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

4. Hourly Rates.

Comment. The NRC received eight comments that specifically addressed the proposed increases in the professional hourly rates. Those commenting indicated that the increases would create a substantial financial burden for the licensees, particularly when added to the proposal to expand the scope of Part 170. Several commenters stated that the proposed hourly rates exceed the hourly charges of senior consultants or principals at major consulting firms, and exceed the generally accepted rate for similar work in private industry. Some commenters stated that the rate is unjustifiably high and does not reflect the actual cost of providing regulatory services to licensees. One commenter said that the increase does not coincide with actual cost of living increases. This commenter stated that the increases cannot be justified based on inflation indicators over the period which have increased on the order of 3 percent or less per year. Uranium recovery commenters stated that the hourly charges should be predictable to permit licensees to budget and plan accordingly. An individual uranium recovery licensee and The National Mining Association (NMA), whose members include owners

and operators of uranium mills, mill tailings sites and in situ uranium production facilities, added that, to the extent such hourly rates are a result of the 100 percent budget recovery requirement of OBRA-90, the NRC should work with Congress to make the fee system more equitable. One commenter suggested that support staff be reduced parallel with FTE reductions and questioned whether materials program support staff could be shared with other programs to lessen what the commenter termed the "support imbalance and consequent licensee load."

Response. As stated in the proposed rule, due to a budget coding error that occurred in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates plus salary and benefit increases since that time. The FY 1997 hourly rate for the reactor program was \$131, and the FY 1997 hourly rate for the nuclear materials and nuclear waste program was \$125. The NRC salaries and benefits increased 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999. Considering only these increases, the FY 1999 hourly rates would be \$142 for the reactor program and \$136 for the materials program. However, there has also been a shift in the proportion of direct resources between the reactor program and the materials program. As a result, the materials program has a larger share of the direct resources than in the past and consequently must absorb more of the overhead and management and support costs. The professional hourly rates are based on budgeted costs. Because overhead resources are budgeted separately for the materials and reactor programs, they cannot be "shared" for purposes of the hourly rate calculations as suggested by one commenter. Agency management and support costs, on the other hand, are not budgeted separately for the reactor and materials programs. Instead, these costs are allocated to the programs based on their share of the budgeted direct resources. Because the materials program now has a larger share of the direct resources than in the past, more of the management and support costs have been allocated to the materials program.

As indicated in previous final rules, the NRC professional hourly rates must be established at levels to meet the statutory requirement of OBRA-90 to recover through fees approximately 100 percent of the budget authority, less the appropriation from the Nuclear Waste Fund. The NRC is not able to use inflation or other indices as the basis for the development of the hourly rates charged under 10 CFR 170 and 171 because these factors may not allow the NRC to meet the 100 percent fee recovery requirement.

Given the budgeted costs that must be recovered through the hourly rates, it is necessary to increase the FY 1999 hourly rates to \$141 for the reactor program and \$140 for the materials program. The method and budgeted costs used in the calculation of the hourly rates are discussed in Section III of this final rule. In addition, the agency work papers supporting each proposed and final rule include details of the hourly rate calculations. These work papers also contain details of the agency's budget used in the development of the FY 1999 hourly rates and fees. The work papers supporting the fee rules are available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC 20555-0001. The specific details regarding the NRC's FY 1999 budget are documented in the NUREG-1100, Vol. 14, "Budget Estimates, Fiscal Year 1999" (February 1998). Copies of NUREG-1100 may be purchased from the Reproduction and Distribution Services Section, OCIO, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and from the National Technical Information Service, Springfield, VA 22161-0002. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room.

5. Fee Adjustments.

Comment. Five comments were received on the proposed fee adjustments to the fee schedules for specific classes of licensees set forth in §§170.21 and 170.31. NEI specifically commented on the NRC's proposal to revise §§170.21 and 170.31 to reflect the increased hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. NEI questioned the statement in the proposed rule that the average number of professional hours required to conduct inspections and to review and approve new license applications increased for 20 of 33 fee categories. NEI stated that license applications have become more uniform and inspection frequency is expected to decline as a result of implementation of the NRC's new risk-informed, performance-based regulatory philosophy. Four other commenters expressed opposition to the increased fees for materials licensees, which include increases in Part 170 fees for certain categories. These commenters indicated that the proposed changes would have adverse affects on licensees. A manufacturer of portable density and moisture testing gauges stated that economic hardship on licensees will lead to the sale and disposal or abandonment of gauges and subsequent license termination. The commenter stated that use of a valuable tool will be diminished as a result of the fee increases and referred to the low cost of regulating this category of radioactive materials devices, the low activity of material in the devices, and the safety record of these devices. Other commenters indicated that the increases were unjustified, pointing to the safety record of devices covered by fee category 3P (all other byproduct material) and the time span between inspections for these types of licenses. One commenter stated that, in light of NRC's efforts to streamline its licensing, inspection and enforcement programs, costs should be reduced commensurate with a reduction in resources and activity.

Response. The results of the biennial review of fees were based on actual staff hours reported for the various license categories over a 5-year period. During the 5-year period,

almost 700 new license applications and almost 4000 amendment requests were processed for fee category 3P, "All other byproduct material", and approximately 2300 inspections were conducted. Similar numbers of actions were reported for nuclear medicine licenses. Although fewer actions were reported for certain other categories, the volume of data is sufficient to support the increases in the average time spent on these categories. Based on the volume analyzed in the biennial review, the NRC has no basis to modify the average time results for processing these applications and inspections. The NRC is streamlining its licensing and inspection efforts and is working on a series of guidance documents related to about 20 categories of materials licenses. Because these initiatives are still under development, the full efficiencies have yet to be realized. Based on the requirement for NRC to recover approximately 100 percent of its budget authority through fees each fiscal year and the requirement to biennially review and revise charges to recover the costs of providing the services, the NRC is unable to establish fees based on cost reductions that may occur in future fiscal years. Part 170 fees must approximate current costs. The NRC is adopting the results of the biennial review in this final rule for those fee categories subject to flat fees based on the average professional time to complete the actions. These revised flat fees also reflect the increased hourly rates for FY 1999.

C. Specific Comments - Part 171.

1. Rebaseline with a 50 percent cap.

Comment. Nine commenters specifically addressed the two options presented by the NRC for rebaselining the FY 1999 annual fees: Option A, rebaseline without a cap, or Option B, rebaseline with a 50 percent cap on FY 1999 annual fee increases. Five commenters, uranium

recovery licensees or persons representing the uranium recovery class, preferred the 50 percent cap, "if forced to choose." These commenters indicated that the cap would at least spread the annual fee increases for uranium recovery licensees over two years to lessen the drastic impact to their budgets for a given year. One uranium recovery commenter indicated that even the 50 percent increase is excessive when governmental inflation indexes indicate an inflation rate of 3 percent or less. The National Mining Association (NMA) stated that the uranium recovery licensees had no warning of how significant the increase in fees would be for FY 1999. Another commenter, a materials licensee, supported the cap, but stated that 50 percent was too high. This commenter recommended that all fee increases be capped at a level commensurate with the inflation rate. Three commenters, NEI, a reactor licensee, and a materials licensee, supported rebaselining without a cap. These commenters stated that rebaselining without a cap is more fair because it allows NRC to determine the amount of resources devoted to regulation of certain licensees and allocate the costs to those licensees. One commenter stated that the cap could result in an unfair allocation to some licensees of costs over the cap amount incurred for other licensees. NEI stated that it is inappropriate given the developing competitive environment in which nuclear licensees will operate or are already operating, to require all licensees to subsidize any licensee who received services costing more than the cap amount.

Response. The Commission is establishing rebaselined FY 1999 annual fees without a cap, after comparing the allocation of its FY 1999 budgeted costs with those of FY 1995. The Commission concluded that there have been significant changes in the allocation of agency resources among the various classes of NRC licensees. This fulfills the Commission's policy commitment made in the Statement of Considerations accompanying the FY 1995 fee rule (60 FR 32225) that base annual fees would be re-established (rebaselined) if there is a substantial

change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with significant fee increases, establishing new baseline annual fees without a cap results in a fair and equitable allocation of costs among licensees.

The major purpose for the option to establish the FY 1993 rebaselined annual fees with a 50 percent cap was to provide greater fee stability than would be provided by rebaselining without a cap, and to provide advance notice to licensees of the full annual fees for their future budget planning purposes. There was, however, a lack of overwhelming support for the cap. Some commenters who chose the cap were in fact reluctant to support either option. Capping fee increases for a class or classes of licensees necessarily results in additional fees being assessed to other classes of licensees in order to recover approximately 100 percent of the budget as required by statute. A cap on FY 1999 fee increases has the potential to exacerbate concerns about the fairness and equity of licensees being charged for activities that do not directly benefit them. Based on these concerns, an evaluation of NRC budget allocation data, and the lack of overwhelming support from commenters, the Commission has decided against adopting a cap on fee increases for FY 1999.

2. Rebaselining frequency.

Comment. Eight comments were received in response to the NRC's solicitation of public comment on whether the NRC should, in future years, continue to use the percent change method and rebaseline fees every several years, as established in the FY 1995 fee rule statements of consideration, or return to a policy of rebaselining annual fees every year. Five commenters were in favor of rebaselining every several years, three were in favor of

rebaselining annually. In support of annual rebaselining, NEI stated that the percentage change method does not promote the in-depth review, revision, and streamlining of programs it believes is necessary to ensure maximum agency efficiency. In a similar comment, Duke Energy Corporation (Duke) stated it believes that annual rebaselining would enable the NRC to better monitor its programs and ensure that costs are accurately assessed to licensees who benefit from the associated services and would ensure that licensees would not unjustly subsidize the costs of services provided to other licensees. The NMA and several uranium recovery licensees commented that the fees should only be rebaselined every several years so that the fees remain reasonably predictable from year to year. These commenters stated that a reasonable degree of predictability of the fees is needed to enable licensees to plan, forecast, and budget accurately. The United States Enrichment Corporation (USEC) also supported rebaselining every several years as appropriate, such as when there is significant downsizing, agency reorganization, or additions of new fee classes. USEC stated that although rebaselining provides for a more in-depth review of the NRC's programmatic efforts, it also has the potential to reintroduce into the fee process an instability that the percentage change method was created to address. USEC referred to the methodology for stabilizing fees described by the NRC in the FY 1996 fee rule, stating that consistent and appropriate application of that methodology should result in rebaselining when warranted, but not necessarily annually. USEC stated that the methodology will result in a fair allocation of fees while maintaining some stabilization and fee predictability.

Response. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years as warranted. The current policy of adjusting the annual fees only by the percent change in NRC's total budget unless there is a substantial

change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees provides for fee stabilization, which is a continuing issue of concern for licensees as evidenced by the comments received. The commenters did not provide overwhelming support for reversing the current policy. Therefore, the Commission is continuing the policy as described in the Statement of Considerations for the FY 1995 final fee rule (60 FR 32218; June 20, 1995) to stabilize fees by adjusting the annual fees only by the percent change in NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The Commission stated in the FY 1995 rule that the percent change method would be used for a maximum of four years. Annual fees for FYs 1996, 1997, and 1998 were established based on the percent change method. The Commission determined that it is appropriate to establish new baseline fees for FY 1999 based on the program and fee policy changes that have taken place since FY 1995, and the addition of a new fee class for spent fuel storage/reactor decommissioning. Based on the experience gained as a result of applying the criteria for rebaselining over the past four years, the Commission has determined that in the future annual fees should be rebaselined every three years, or earlier if warranted. The decision on the appropriate method for establishing annual fees for the intervening two years will be made each year.

3. Spent fuel storage/reactor decommissioning annual fee.

Comment. Four comments were received on NRC's proposal to establish a spent fuel/storage decommissioning annual fee to be assessed to all reactor licensees,

regardless of their operating status, and to Part 72 licensees who do not hold a Part 50 license. Duke supported the proposed change, stating that the current fee regulation would impose duplicative fees on licensees for use of a Part 72 general license if they already perform the same activities under a specific Part 72 license. Duke contends that imposition of such substantial and duplicative fees is inconsistent with Congress' direction in the Nuclear Waste Policy Act of 1982, as amended, that NRC eliminate the need for specific NRC authorization for onsite storage of spent fuel to the maximum extent practicable. Duke stated that the duplicate annual fees for both types of licenses would deny licensees the reasonable opportunity to use the general licenses, and supports the removal of such disincentive by revising the fee regulations as proposed. South Carolina Electric and Gas Company objected to the proposed fee because it does not maintain an Independent Spent Fuel Storage Installation (ISFSI), has adequate storage capacity in its Spent Fuel Pool (SFP), and does not plan to build an ISFSI for at least 15 years. The commenter stated that, under the proposal, it would pay fees for continuing to store spent fuel in the SFP until an ISFSI is needed, but would not realize services or benefits for those fees. The commenter stated that it is not appropriate for its customers to pay the ISFSI fees of other licensees and, had DOE honored its obligation to take possession of spent fuel by January 1998, the fee would not be an issue. Two other commenters, reactor licensees who have permanently ceased operations, opposed the imposition of the proposed fee for their licenses because they have no fuel onsite. These commenters argued that because they have no fuel onsite they derive no benefit from NRC activities related to spent fuel storage. GE Nuclear stated that its Vallecitos Boiling Water Reactor (VBWR) derives no comparable benefit from the NRC's decommissioning activities because essentially all of the facilities, structures, and systems, external to the containment vessel associated with VBWR operations have been removed, leaving a very small containment structure and internal

components subject to future decommissioning. PECO Energy Company (PECO) stated that the Peach Bottom Atomic Power Station Unit 1 (PBAPS) spent fuel pool has been off-loaded, drained, and decontaminated. PECO stated that it plans to keep PBAPS Unit 1 in a SAFSTOR and the only activity being performed is required Technical Specifications Surveillance through December 2015.

Response. The NRC is establishing a spent fuel storage/reactor decommissioning annual fee in this final rule. However, this new annual fee will not be assessed to those reactors that have permanently ceased operations and have no spent fuel onsite. The NRC agrees with the commenters that NRC's generic spent fuel storage activities are not applicable to reactors that have ceased operations and have removed all fuel from the site. However, the new fee will be assessed to all reactors who have fuel onsite regardless of the storage option the licensee elects to use. The NRC recognizes that sites will be required to continue to store spent fuel onsite until another solution becomes available. The fact that DOE has not taken possession of the spent fuel does not relieve NRC of the OBRA-90 requirement to recover approximately 100 percent of its budget authority through fees, including those costs associated with generic spent fuel storage activities. The NRC believes that assessing a spent fuel storage/reactor decommissioning annual fee to all reactor licensees who have spent fuel onsite and all Part 72 licensees who do not hold a Part 50 license is a reasonable approach for recovering NRC costs for generic spent fuel storage and reactor decommissioning activities. The current policy has raised concerns that the fee structure could create a disincentive for licensees to pursue dry storage. The spent fuel storage/reactor decommissioning annual fee will give equivalent fee treatment to both storage options. The annual fee also addresses concerns about the fairness of assessing multiple annual fees if a licensee holds multiple Part

72 licenses for different designs. Further, the annual fee will result in most reactor licensees being assessed the costs of NRC's generic reactor decommissioning activities. This annual fee includes the costs of NRC's generic and other research activities directly related to reactor decommissioning and spent fuel storage (both storage options), and other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except those activities which are subject Part 170 fees. The final FY 1999 spent fuel storage/reactor decommissioning annual fee is \$206,000. This reflects that an annual fee is not being imposed on those six reactors which have permanently ceased operations and have no fuel onsite. This also takes into account the prorated FY 1999 annual fee to be assessed to DOE for the Part 72 license issued on March 19, 1999, for the storage of fuel and fuel debris resulting from the Three Mile Island Unit 2 accident.

4. Revised Fuel Cycle Matrix.

Comment. USEC, although supportive of the decreased FY 1999 annual fees for the Paducah, Kentucky and Portsmouth, Ohio Gaseous Diffusion Plants (GDPs), requested that the NRC revise the fee rule to recognize that the GDPs are the operational equivalent of a single plant and assess a single fee for the complex. USEC argued that a double assessment on the two certificates of compliance results in a significantly disproportionate allocation of costs to USEC. USEC also requested that NRC revise the Effort Factor rating in the fuel facility matrix used by NRC to assess relative effort for a facility. Specifically, USEC took issue with NRC's matrix evaluation of the relative weight and, hence, NRC's regulatory effort for GDP activities. USEC stated that NRC counted the risk for UF₆ twice, once as solid and once as

liquid. USEC argues that the risk is less, and that the Effort Factor for UF6 should be reduced from 10 to 5 for the GDPs.

Response. The NRC has rejected previous requests from USEC that a single fee be assessed for the two GDPs. For the reasons stated in response to USEC's comments on the proposed FYs 1997 and 1998 fee rules (62 FR 29197; May 29, 1997, and 63 FR 31843; June 10, 1998), and in NRC's March 23, 1998, denial of USEC's annual fee exemption request, the NRC believes that USEC must pay a full annual fee for each of its enrichment facilities. USEC has recently appealed the FY 1998 annual fee assessments for the two GDPs. Because USEC raised these same specific issues in its current exemption request, we will address those issues in our forthcoming response to the exemption request. In the fuel facility matrix, the NRC assessed the risk based on the total relative amounts of UF6 and the number and complexity of the processes involved with UF6. These factors merit weighting the value as 10 for the GDPs when compared to other fuel cycle facilities.

D. Other Comments.

1. Inconsistency in Hourly Rate and Annual Fee Calculation Tables.

Comment. One commenter stated that there is an inconsistency in the proposed rule between the table showing the calculation of the professional hourly rates and the table showing the amount to be recovered through annual fees. Specifically, the commenter stated that Table I, "Budget and Fee Recovery Amounts for FY 1999", indicates that \$103.5 million is expected to be recovered through Part 170 fees in FY 1999, while Table II, "FY 1999 Budget

Authority to be Included in Hourly Rates" indicates that \$257.4 million is to be recovered through Part 170 fees in FY 1999.

Response. The amounts shown in Tables I and II are correct. In the proposed rule, Table I, "Budget and Fee Recovery Amounts for FY 1999," shows that the estimated amount for recovery under Part 170 totals \$103.5 million. Table II, "FY 1999 Budget Authority to be Included in Hourly Rates," shows that the total budgeted costs for the reactor program excluding direct contract support, plus the management and support costs allocated to the reactor program, totals \$257.4 million. This sum, which is used to develop the reactor program hourly rate, is recovered through the imposition of fees under both Parts 170 and Parts 171.

2. Adverse Effects of Fee Increases.

Comment. Many commenters opposed the fee increases in general, indicating that the increases are not justified and would have adverse economic impacts on NRC licensees. Several commenters expressed concerns that with the decline in the number of licensees, the remaining licensees are required to pay a greater share of NRC's costs with no increase in benefits. Some commenters stated that NRC's budget should be reduced in a manner that is consistent with the reduction in the number of licensees. Others specifically requested that the NRC consider options to address the effects of increased license fees and a declining number of licensees. Commenters also indicated that there should be a reduction in NRC costs as the agency moves towards a performance-based regulatory structure, translating to lower fees. Although some commenters recognized NRC's efforts to downsize and streamline its programs, they indicated that the NRC should find ways to further streamline

and operate more efficiently. Some commenters requested that the increased fees be reconsidered based on the low risk and safety records associated with the licensed activities. NEI cited several reasons why the NRC should consider decreasing its future budget requests, including: NRC's revised oversight process which should result in decreased inspection hours; a declining number of industry events that should lead to fewer inspections; and the NRC's revised enforcement process which should require fewer agency resources. NEI also suggested that the NRC consider additional changes to its organizational structure, such as eliminating the regional offices and reducing the resources related to research activities.

Response. The NRC's budget, which is carefully scrutinized and reviewed by OMB and Congress prior to approval, reflects the resources necessary to carry out its health and safety mission. The NRC is continuing its streamlining efforts and constantly looks for ways to further improve its operations. However, some of the NRC's streamlining initiatives and the activities required to transition to performance-based licensing require an initial expenditure of resources before the results of those actions are realized. The rebaselined annual fees, which increased for some classes and decreased for other classes, reflect the budgeted costs for each class of licensee. The NRC recognizes that there may be adverse economic impacts on those classes of licensees with fee increases for FY 1999. However, as the NRC has stated in response to similar comments received on previous fee rules, because OBRA-90, as amended, requires the NRC to recover approximately 100 percent of its budget authority through fees, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class of licensee without increasing the fees, and thus creating adverse economic impacts, for another class of licensees. Therefore the NRC has considered only the impacts it is required to consider by law. As required by the Regulatory Flexibility Act of 1980, the NRC has

considered the impact of its fee regulations on small entities and evaluated alternatives to minimize those impacts. This evaluation is included in the Regulatory Flexibility Analysis which is Appendix A to this final rule. As a result of this analysis, the NRC is continuing the maximum annual fee of \$1,800 established in FY 1991 for certain small entities, and the lower-tier small entity fee of \$400 established in FY 1992 for small entities with relatively low gross annual receipts and for manufacturing concerns with relatively few employees.

As explained in the proposed rule, the rebaselined FY 1999 annual fees reflect program changes that have occurred since the last rebaselining in FY 1995. These changes include the NRC's successful downsizing and streamlining efforts. The NRC's budget to be recovered through fees has decreased from approximately \$504.0 million in FY 1995 to approximately \$449.6 million in FY 1999, a reduction of more than 10 percent. In constant 1993 dollars, the NRC's budget has decreased by \$127.5 million, or approximately 24 percent, since FY 1993, as shown in the following table:

| Fiscal Year (FY) | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|---|-------|-------|-------|-------|-------|-------|-------|
| Budget (\$ millions, constant 1993 dollars) | 540.0 | 522.4 | 498.7 | 439.7 | 434.1 | 427.0 | 412.5 |
| Difference from FY1993 (\$ millions) | | 17.6 | 41.3 | 100.3 | 105.9 | 113.0 | 127.5 |

The rebaselined FY 1999 annual fees reflect the budgeted costs for each class of licensee, less the estimated Part 170 collections for that class for FY 1999. The FY 1999

annual fees for materials licenses subject to "flat" Part 170 fees also reflect the results of the biennial review of fees as required by the CFO Act, as well as the inclusion of the budgeted costs for license amendments, renewals, and inspections. The FY 1999 annual fees increased for certain categories of these materials licensees. However, these licensees are no longer required to pay Part 170 fees for amendments, renewals, and inspections.

Although fewer resources may be needed to complete licensing reviews and conduct inspections for a particular class of licensees as the number of licensees in the class declines, there is not necessarily a correlation between the number of licensees and the agency's regulatory oversight mission. For instance, the need for rulemaking is not diminished as the number of licensees decrease. However, a portion of the costs associated with certain rulemaking and other generic activities is allocated to the annual fee surcharge based on the ratio of Agreement States licenses to NRC licenses in the affected class of licensees. The surcharge costs are then assessed to all classes of licensees based on their share of the budget. As a result, the full economic impact of additional Agreement States and the resulting loss of NRC licensees is not borne entirely by the affected class.

The NRC's budgets are outside the scope of this rulemaking and therefore commenters' suggestions regarding future NRC budgets are not addressed in this final rule. The NRC's budget is public information and undergoes Office of Management and Budget and Congressional review annually. The NRC is establishing the rebaselined FY 1999 annual fees at the levels necessary to recover the budgeted costs for each class of licensee from that class to the extent practicable, and to recover the surcharge costs from all classes of licensees based on their share of the budget.

3. Uranium Recovery Issues.

Comment. Several comments relating to specific uranium recovery issues were received from uranium recovery licensees and their representatives. The commenters claimed that the uranium recovery industry has been targeted for especially large fee increases and gave several reasons why they believe their treatment under the proposed rule is especially harsh and unfair. The commenters stated that the increases in hourly rates and license fees place an undue burden on the uranium recovery industry, which is suffering from a depressed market. The commenters expressed concern that they cannot "pass through" such costs, and the fee increases directly affect the profitability and viability of an operation. The commenters also indicated that the imposition of such high fees and hourly rates on the uranium recovery industry discourages current uranium production and discourages companies from maintaining facilities in a standby status until market conditions improve. This, commenters claimed, is against the national interest of preserving the domestic energy production infrastructure. Commenters stated that NRC efforts to promote performance-based licenses for uranium recovery licensees should result in lower, not higher, license fees for the uranium recovery class. Commenters pointed to areas where they believe NRC engages in excessive regulatory oversight of the uranium recovery licensees: conducting two inspections each year of uranium in-situ leach (ISL) operations, compared to the one inspection conducted per year before the NRC's closed the Uranium Recovery Field Office, and requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments. The commenters also questioned the need for increased NRC efforts related to groundwater concerns for in-situ facilities when it is questionable if NRC should be regulating in-situ leach wellfields and associated groundwater concerns.

Response. The NRC does not select, or "target," any class of licensees for fee increases or fee reductions. Instead, rebaselined annual fees are established to recover the budgeted costs of NRC's regulatory programs for each class of licensee, plus a percentage of the surcharge costs allocated to that class based on their share of the budget. The NRC has addressed similar comments in previous fee rules concerning the market condition of the uranium recovery industry and the national interest of preserving the energy production infrastructure. The Commission continues to conclude that it cannot set fees based on passthrough considerations. As stated in response to comments on this issue in the FY 1993 fee rule (58 FR 38667; July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency and does not have the resources necessary to evaluate continuously purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA-90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status.

The NRC has examined ways to reduce or eliminate inspections. In establishing inspection frequencies, the NRC considers the risk to public health and safety and the environment. Sites under reclamation are to be inspected once every three years unless a specific request is received from a licensee for the NRC staff to review elements of construction. Sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year, depending on the inspection record. If an operating uranium recovery

licensee has a good inspection record and the NRC determines that a reduced number of inspections is warranted, the NRC will eliminate one annual inspection.

The NRC agrees that performance-based licensing should result in reduced Part 170 fees for uranium recovery licensees. Under a performance-based license, a licensee is allowed flexibility to make certain changes at the site without the need for a license amendment. This streamlined form of license, when implemented properly by the licensee, should result in less hours spent on staff reviews of licensee submittals.

The NRC staff's experience in the area of erosion protection has shown that this is an area where impacts to the impoundment may be the greatest. To provide additional guidance for the licensees in this and other technical areas, the NRC developed a Standard Review Plan for Reclamation of Title II Sites and an erosion report that discusses acceptable design methods and analyses for erosion control. These two documents were released for public comment in February 1999. The NRC staff is reviewing and will be responding to the comments received. The final versions of these documents should provide more clearly the types of design methods and analyses that would serve as acceptable bases for the NRC's staff's conclusions about the stability of the site.

In late 1997, the NRC began examining its role in the regulation of ISL wellfields and the associated groundwater. To assist the NRC in this endeavor, in April 1998, the National Mining Association (NMA) provided the Commission with a White Paper in which it discussed four major concerns, including one related to in-situ facility regulation. Based on the NRC staff's and NMA's concerns, the NRC staff prepared a paper which is now before the

Commission which outlines options for NRC regulation of groundwater and wastes at ISL facilities. The Commission's decision will shape NRC's future regulatory program in this area.

4. NRC'S fee billing systems and practices.

Comment. Two commenters requested that NRC modify its billing systems and practices. NEI requested that NRC allocate the costs of services to individual units at multi-unit sites. NEI complained that under current practice the agency "arbitrarily" allocates site-wide inspection fees to one unit. NEI stated that due to varying ownership percentages in each unit, it is critically important in a competitive environment for site-wide fees to be allocated to the individual units. The NMA requested that NRC continue its efforts to provide bills that contain more meaningful descriptions of the work done. The NMA stated that in the private sector, adequate explanations are provided for clients to fully understand what was done, when it was done, and how much time was spent on each discrete activity. The NMA indicated that such a system could help identify problems, such as excessive time spent on reviews of licensee submittals.

Response. Beginning with the FY 1998 fee rule, which became effective August 10, 1998, the NRC is assessing Part 170 fees to recover all of the resident inspector's time, except leave time and time spent in support of another facility. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. However, a senior resident inspector may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, the NRC is not able at this

time to provide separate billings for each unit for the non-inspection senior resident inspector time. The NRC will pursue modification of its billing system in the future to allocate this senior resident time to each docket on a prorated basis, e.g, if there are three dockets and one senior resident inspector at the site, each docket will be billed for one-third of the senior resident inspector's time that is not related to a specific inspection.

With respect to the request from materials licensees that more detailed information be provided on their bills, the NRC converted to a new billing format in October 1998 for materials licensing actions subject to full cost recovery under Part 170. These bills now provide more detailed information on the charges to support the licensing review costs. A supporting document is included with these bills which provides information on the date of the application, the control number for the application, the name of the NRC reviewer and/or contractor, the number of regular and non-regular hours expended by the reviewer, and the NRC reviewer's title. In FY 2000 the NRC plans to convert to a new inspection fee billing system for materials licensees that will provide more detailed information for inspections.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1999, the NRC's budget authority is \$469.8 million, of which \$17.0 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the

DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this \$3.2 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately \$449.6 million in FY 1999 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 1999 is \$5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

The reduced budgeted costs to be recovered through fees for FY 1999 reflect several actions taken by the NRC. These actions include strategic planning, downsizing, and a more aggressive policy on seeking reimbursement from Federal agencies for performing services that are not a required part of the agency's statutory mission. For example, for FY 1999, the NRC entered into an agreement with the U.S. Agency for International Development to fund NRC's staff costs associated with providing nuclear safety assistance to the countries of the former Soviet Union. As a result, NRC licensees are not required to pay for the costs of this activity in FY 1999. These costs were previously included in NRC's budget authority and the costs were recovered through annual fees assessed to NRC licensees.

The NRC estimates that approximately \$107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to \$94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost under Part 170 for resident inspectors, and a \$4.1 million carryover from additional collections in FY 1998 that were unanticipated at the time the final FY 1998 fee rule was published. In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net

adjustment of approximately \$2.1 million for payments received in FY 1999 for FY 1998 invoices. The remaining \$339.8 million will be recovered in FY 1999 through the 10 CFR Part 171 annual fees, which is approximately \$20.4 million less than in FY 1998.

Table I summarizes the budget and fee recovery amounts for FY 1999:

TABLE I - Budget and Fee Recovery Amounts for FY 1999

(Dollars in Millions)

| | |
|--|--------------|
| Total Budget | \$469.8 |
| Less NWF | -17.0 |
| Less General Fund (Reviews for DOE and other Federal agencies) | -3.2 — |
| Total Fee Base | \$449.6 |
| Less estimated Part 170 fees | -103.5 |
| Less other receipts (estimated) | <u>- 4.2</u> |
| Part 171 Fee Collections Required | 341.9 |
| <u>Part 171 Billing Adjustment¹</u> | |
| Unpaid FY 1999 invoices (estimated) | 3.4 |
| Less estimated payments received in FY 1999 for prior year invoices | -5.5 |
| Subtotal | -2.1 |
| Adjusted Part 171 Collections Required | \$339.8 |

¹These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1999.

Because the final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the Federal Register.

The NRC announced in the FY 1998 proposed rule that the final rule would no longer be mailed to all licensees. However, because the NRC solicited public comments on two potential annual fee schedules for FY 1999, the FY 1999 final rule is being mailed to all licensees. As a cost-saving measure, the NRC does not plan to routinely mail future final fee rules to all licensees, but will send the final rules to any licensee or other person upon request. As a matter of courtesy, the NRC will continue to send the proposed fee rules to all licensees.

In addition to publication in the Federal Register, the final rule is available on the Internet at <http://ruleforum.llnl.gov/>. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A. and B. below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended.

Four major amendments have been made to 10 CFR Part 170 as well as several administrative amendments to update information in certain sections and to accommodate the major changes. These amendments further the underlying basis for the regulation -- that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the IOAA recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

The major changes to 10 CFR Part 170 are:

1. Expanded Part 170 Cost Recovery.

The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by Project Managers.

Part 170 fees are based on Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by

specifically identified activities of the NRC. The term "special benefits" includes services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

In the NRC's FY 1998 fee rulemaking, steps were taken to more appropriately recover costs for certain activities through Part 170 fees rather than through Part 171 fees. This further expansion of the scope of Part 170 for FY 1999 will result in cost recovery for additional activities through Part 170 fees rather than through Part 171 fees.

a. Inspections.

Part 170 fees will be assessed for all inspections, including licensee-specific performance reviews, assessments, evaluations, and incident investigations. Examples of activities that will be billable under Part 170 are performance assessments of fuel facilities, Diagnostic Evaluation Team assessments, and Incident Investigation Team investigations. Licensees who volunteer to participate in a performance review or assessment at NRC's request and which the NRC accepts will be exempted from these Part 170 fees. The inspections that are being included in Part 170 are "special benefits" provided to identifiable recipients, whether or not an inspection report is issued. For example, incident investigations are investigations of significant operational events involving power reactors and other facilities. Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the

specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, will continue to be recovered through Part 171 annual fees, not through Part 170 fees assessed to the licensee. In addition, any time expended by NRC's Office of Investigations on these activities will be recovered through Part 171 fees. These Part 170 fees will not apply to materials licenses for which no inspection fee is specified in Part 170 because the inspection costs are included in the Part 171 annual fee for those fee categories.

b. Additional Document Reviews.

Part 170 is also expanded to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) Final Safety Analysis Reports (FSARs). Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

c. Project Manager Time.

All Project Manager's (PM) time, excluding leave and time spent on generic activities such as rulemaking, will be recovered through Part 170 fees assessed to the specific applicant

or licensee to which the PM is assigned. This change is applicable to all licensees subject to full cost fees under Part 170 and to which PMs are assigned.

Examples of PM activities which will be subject to Part 170 cost recovery are those associated with oversight of the assigned license or plant (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. Examples of PM generic activities that will not be subject to fee recovery under Part 170 are rulemaking and the development of regulatory guides, generic licensing guides, standard review plans, and generic letters and bulletins. If a PM is assigned to more than one license or site, costs for activities other than licensee-specific licensing or inspection activities will be prorated to each of the licenses or sites to which the PM is assigned. The concept of full cost recovery for PMs is similar to the concept of full cost recovery for Resident Inspectors, which was added to Part 170 in the FY 1998 final fee rule (June 10, 1998; 63 FR 31840).

d. Other.

The NRC also solicited public comment in the proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. The costs of these activities are currently recovered through

Part 171 annual fees. The Commission will further evaluate this issue prior to promulgating the FY 2000 fee rule.

2. Amendment Fees Based on Average Costs.

The NRC is revising 10 CFR 170.31 to eliminate the amendment fees for small materials licensees that are based on the average time to complete the reviews ("flat" fees) and include the amendment processing costs in the Part 171 annual fees assessed to the small materials licensees. This change continues the NRC's initiatives to streamline its fee program. In a similar action, the inspection and renewal fees for these licensees were eliminated in the FY 1995 and FY 1996 fee rulemakings, respectively, and the costs included in the annual fees for these categories of licensees.

Although not all materials licensees request amendments during a given fiscal year, approximately 80 percent request at least one amendment over a five-year period and approximately 40 percent of these licensees request multiple amendments during a five-year period.

In addition to streamlining the NRC process, this change eliminates the steps licensees currently take to submit the payments for their amendment requests. It also eliminates any delays in approving proposed amendments due to incorrect payments and provides an efficient means of recovering these costs. The NRC believes that the efficiencies to be gained outweigh any inequities that may result because not all materials licenses are amended each fiscal year.

This change results in an estimated \$900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

3. Hourly Rates.

The NRC is revising the two professional hourly rates for NRC staff time established in §170.20. These revised rates are based on the number of FY 1999 direct FTEs and the FY 1999 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is \$141 per hour (\$250,403 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under §170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is \$140 per hour (\$248,728 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under §170.31 of the fee regulations. In the FY 1998 final fee rule, these rates were \$124 and \$121, respectively. The FY 1998 rates represented a decrease from FY 1997 of \$7 per hour for the reactor program from FY 1997, and \$4 per hour for the materials program.

This increase can be readily explained. In calculating the FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the FY 1999 hourly rates reflect an increase of \$17 - \$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately

\$10 million in contract support for regional management and support were erroneously coded as direct resources for FY 1998 rather than as overhead. The correction of that error in FY 1999 results in substantial increases in the hourly rates compared to FY 1998, from \$124 to \$141 for the reactor program, and from \$121 to \$140 for the materials program. This is the result of the increased overhead costs to be allocated to the two programs, with fewer direct FTE to divide the costs among. In addition, the proportion of direct resources has shifted. The materials program now has a larger share. Therefore, the materials program must absorb more of the overhead and management and support costs.

Because of the error in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates of \$131 and \$125 for the reactors and materials programs, respectively. Applying only the salary and benefit increases of 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999, would result in FY 1998 hourly rates of \$137 for the reactor program and \$131 for the materials program, and 1999 hourly rates of \$142 for the reactor program and \$136 for the materials program. This does not consider the shift that has occurred in the proportion of direct resources from the reactor program to the materials program that results in the materials program having a larger share and therefore absorbing more of the overhead and management and support costs.

The method used to determine the two professional hourly rates is as follows:

- a. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II - FY 1999 Budget Authority to be Included in Hourly Rates

| | Reactor <u>Program</u> | Materials <u>Program</u> |
|---|---------------------------|-----------------------------|
| Direct Program Salaries & Benefits | \$ 99.2m | \$26.4m |
| Overhead Salaries & Benefits, Program Travel and Other Support | \$54.1m | \$15.0m |
| Allocated Agency Management and Support | <u>\$104.2m</u> | <u>\$28.1m</u> |
| Subtotal | \$257.5m | \$69.5m |
| Less offsetting receipts | <u>- .1m</u> | <u>-----</u> |
| Total Budget Included in Hourly Rate | \$257.4m | \$69.5m |

| | | |
|--|-----------|-----------|
| Program Direct FTEs | 1,028.0 | 279.7 |
| Rate per Direct FTE | \$250,403 | \$248,728 |
| Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours) | \$141 | \$140 |

As shown in Table II above, dividing the \$257.4 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,028) results in a rate for the reactor program of \$250,403 per FTE for FY 1999. The Direct FTE Hourly Rate for the reactor program is \$141 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$250,403) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Dividing the \$69.5 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (279.7) results in a rate of \$248,728 per FTE for FY 1999. The Direct FTE Hourly Rate for the materials program is \$140 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$248,728) by the number of productive hours in one year (1,776 hours).

Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1999 hourly rates.

4. Fee Adjustments.

The NRC is adjusting the Part 170 fees in §§170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees

required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. The data for the average number of professional staff hours needed to complete licensing action were last updated in FY 1997 (62 FR 29194; May 29, 1997). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1997. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1999 of \$140 per hour.

The licensing fees reflect an increase in average time for new license applications for 20 of the 33 materials fee categories included in the biennial review, a decrease in average time for 8 fee categories, and the same average time for the remaining 5 fee categories. The average time for export and import new license applications and amendments remained the same for 6 fee categories in §§170.21 and 170.31, and decreased for 4 fee categories.

The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under

\$1,000 are rounded to the nearest \$10. Fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of §171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §171.16. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

5. Administrative Amendments.

a. The NRC is amending §170.2, Scope, and §170.3, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. Part 76 certificates are added to the definition of Materials License in §170.3 (Uranium enrichment facilities are already defined in §170.3). These changes are administrative changes to clarify the applicability of Part 170 fees to these Certificates.

b. The NRC is revising the definition of "Inspection" to specifically include performance assessments, evaluations, and incident investigations. This change is being made to incorporate the expansion of Part 170 in this final rule to include these activities.

c. The NRC is revising the definition of "Special projects" to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 Final Safety Analysis Reports in the list of examples of documents submitted for review that would be subject to special project fees. This revision is needed to incorporate the change in this final rule to include the review of these documents in Part 170.

d. The NRC is revising §170.5, Communications, to indicate that all communications concerning Part 170 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

e. The NRC is deleting the current exemption in §170.11(a)(11), which eliminates fees for amendments to change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG-1556¹, Volume 1. This final rule eliminates the requirement for amendment fees for these licenses and thus the exemption is no longer needed.

f. The NRC is adding §170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee

¹Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

volunteers at NRC's request. This change accommodates action in this final rule to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is revising §170.12, Payment of Fees, to reflect the revision to Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section is also revised to delete references to amendment fees for materials licenses that are not based on full cost to reflect the elimination of these fees in this final rule. The costs for these activities will be included in the Part 171 annual fee for these materials licensees.

Section 170.12(h), Method of Payment, is redesignated as §170.12(f) and revised to specify the information the NRC needs to issue refunds. This change is necessitated by new Treasury requirements that were effective January 1, 1999.

In summary, the NRC has:

1. Revised Part 170 to include full cost recovery for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the Project Managers' time excluding time spent on generic activities and leave time;
2. Eliminated Part 170 "flat" amendment fees for materials licenses. The amendment costs will be recovered through Part 171 annual fees assessed to materials licensees;

3. Revised the two 10 CFR Part 170 hourly rates; and
4. Revised the licensing fees assessed under 10 CFR Part 170 to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency, and to reflect the revised hourly rates.

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

The NRC has made three major amendments to 10 CFR Part 171 and several administrative amendments to update information in certain sections and to incorporate the major changes. These major changes result in annual fees being assessed to licensees previously exempted from annual fees, increased annual fees for some licensees, and decreased annual fees for other licensees.

The changes are consistent with our statutory mandate; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec.

at H12692-93). Costs not attributable to a class of licensees are allocated following the conferees' guidance that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." (136 Cong. Rec. at :112692-3). The Conference Report guidance also provides that: "these expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment." As in the past, these costs are allocated to the entire population of NRC licensees that pays annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

The major changes to Part 171 are in the following areas.

1. Reactor Decommissioning/Spent Fuel Storage.

The NRC is revising 10 CFR Part 171.15 to establish a spent fuel storage/reactor decommissioning annual fee. This annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all operating and non-operating Part 50 power reactor licensees, except those power reactor licensees who have permanently ceased operations and have no fuel onsite. The full amount of the FY 1999 annual fee will be billed to those Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment will be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee will

be reflected in the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 will be made in accordance with §171.19(b). The annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage have been eliminated. This change assures equivalent fee treatment for both wet (spent fuel pool) and dry (Independent Spent Fuel Storage Installation) storage of spent fuel. This change will also ensure that power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

This change does not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees will still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC will continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

2. Annual Fees.

The NRC is establishing new baseline annual fees for FY 1999. The annual fees in §§171.15 and 171.16 are revised for FY 1999 to recover approximately 100 percent of the FY 1999 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 1999 is \$339.8 million, compared to \$360.2 million for FY 1998.

In the FY 1995 final fee rule (60 FR 32218, 32225; June 20, 1995), the NRC stated that it would stabilize annual fees as follows:

For FY 1996 through FY 1999, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either condition occurred, the annual fee base would be recalculated. The percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. This method of determining annual fees is the "percent change" method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

New baseline fees are established for FY 1999 based on the program changes that have taken place since the baseline fees were established in FY 1995, including those resulting from the agency's strategic planning efforts, downsizing, reorganization of agency resources, and the addition of a new annual fee class (spent fuel storage/reactor decommissioning) as previously described. In addition, there have been several fee policy changes since FY 1995. Fee policy changes include the elimination of renewal fees in FY 1996 for most materials licensees, the elimination of amendment fees for these licensees in FY 1999, and the inclusion of these costs in the materials licensees' annual fees.

Table III below shows the FY 1999 rebaselined annual fees for representative categories of licensees.

TABLE III

| <u>Class of Licensees</u> | <u>FY 1999 Annual Fee</u> |
|---|---------------------------|
| Power Reactors (including spent fuel storage/reactor decommissioning annual fee) | \$2,776,000 |
| Spent fuel storage/reactor decommissioning | 206,000 |
| Nonpower Reactors | 85,900 |
| High Enriched Uranium Fuel Facility | 3,281,000 |
| Low Enriched Uranium Fuel Facility | 1,100,000 |
| UF ₆ Conversion Facility | 472,000 |
| Uranium Mills | 131,000 |
| Solution Mining | 109,000 |
| Transportation | |
| Users and Fabricators | 66,700 |
| Users only | 2,200 |
| <u>Typical Materials Licenses</u> | |
| Radiographers | 14,700 |
| Well loggers | 9,900 |
| Gauge users | 2,600 |
| Broad scope medical | 27,800 |
| Broad scope manufacturers | 26,000 |

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees but must be recovered from the licensees to comply with the requirements of OBRA-90. The FY 1999 budgeted costs that will be recovered in the surcharge from all licensees are shown in Table IV.

TABLE IV - Surcharge

| Category of Costs | FY 1999 Budgeted Costs (\$, M) |
|---|-----------------------------------|
| 1. Activities not directly attributable to an existing NRC licensee or class of licensee: | |
| a. International activities | 6.3 |
| b. Agreement State oversight | 6.4 |
| c. Low-level waste disposal generic activities | 4.1 |
| d. Site decommissioning management plan activities not recovered under Part 170 | 4.6 |

| | |
|--|-------|
| 2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on legal constraints or Commission policy: | |
| a. Fee exemption for nonprofit educational institutions | 6.9 |
| b. Licensing and inspection activities associated with other Federal agencies | 2.8 |
| c. Costs not recovered from small entities under 10 CFR 171.16(c) | 5.3 |
| 3. Activities supporting NRC operating licensees and others | |
| a. Regulatory support to Agreement States | 14.6 |
| b. Generic decommissioning/reclamation, except those related to power reactors | 4.2 |
| | ----- |
| Total Budgeted Costs | 55.2 |

The NRC has continued to allocate the surcharge costs, except LLW surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume disposed by the certain

classes of licensees. The surcharge costs allocated to each class are included in the annual fee to be assessed to each licensee. The FY 1999 surcharge costs that are allocated to each class of licensee are shown in Table V.

TABLE V - Allocation of Surcharge

| | <u>LLW Surcharge</u> | | <u>Non-LLW Surcharge</u> | | <u>Total Surcharge</u> |
|--|----------------------|-------------|--------------------------|-------------|------------------------|
| | <u>Percent</u> | <u>\$.M</u> | <u>Percent</u> | <u>\$.M</u> | <u>\$.M</u> |
| Operating power reactors | 74 | 3.0 | 80.3 | 41.0 | 44.0 |
| Spent fuel storage/ reactor decommissioning | -- | --- | 6.3 | 3.2 | 3.2 |
| Nonpower reactors | -- | --- | 0.1 | 0.0 | 0.0 |
| Fuel facilities | 8 | 0.4 | 5.0 | 2.6 | 2.9 |
| Materials users | 18 | 0.7 | 5.9 | 3.1 | 3.8 |
| Transportation | -- | --- | 1.0 | 0.5 | 0.5 |
| Rare earth facilities | -- | --- | 0.1 | 0.0 | 0.0 |
| Uranium recovery | -- | --- | 1.3 | <u>0.7</u> | <u>0.7</u> |
| Total Surcharge | | 4.1 | | 51.1 | 55.2 |

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3. and 4. below. The work papers which support this final

rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The work papers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001.

Because this final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1999 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1999 rule. Those materials licensees whose license anniversary date during FY 1999 falls before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

3. Revised Fuel Cycle and Uranium Recovery Matrixes.

The NRC is adopting revised matrixes in the determination of annual fees for fuel facility and uranium recovery licensees. As part of the rebaselining efforts, the NRC is using a revised matrix depicting the categorization of fuel facility and uranium recovery licenses by authorized material and use/activity and the relative programmatic effort associated with each category.

a. Fuel Facility Matrix.

The NRC is using a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in a more accurate reflection of the NRC's current costs of providing generic and other regulatory services to each type of fuel facility.

The FY 1999 budgeted costs of approximately \$16.3 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. The revisions to the matrix take into account changes in process operations at certain fuel facilities. The revised matrix also explicitly recognizes the addition of the uranium enrichment plants to the fee base and a reduction of three licensees (B&W Parks Township, B&W Research and General Atomic) as the result of the termination of licensed activities. In the revised matrix (which is included in the publicly available work papers), licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from safety and safeguards perspectives. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on

the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders. This would result in a higher fee for those remaining in the fee category.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

The effort factors for the various subclasses of fuel facility licensees are as follows:

| | No. of <u>Licenses</u> | <u>Effort Factors</u> | |
|----------------------------|---------------------------|-----------------------|-------------------|
| | | <u>Safety</u> | <u>Safeguards</u> |
| High Enriched Uranium Fuel | 2 | 91 (33.1%) | 76 (54.7%) |
| Enrichment | 2 | 70 (25.5%) | 34 (24.5%) |
| Low Enriched Uranium Fuel | 4 | 88 (32.0%) | 24 (17.3%) |

| | | | |
|-----------------------------|----------|-----------------|-----------------|
| UF6 Conversion | 1 | 12 (4.4%) | 0 (0%) |
| Limited Operations Facility | 1 | 8 (2.9%) | 3 (2.2%) |
| Others | <u>1</u> | <u>6 (2.2%)</u> | <u>2 (1.4%)</u> |
| Total | 11 | 275 (100%) | 139 (100%) |

These effort factors are applied to the \$16.3 million total annual fee amount. This amount includes the low level waste (LLW) surcharge and other surcharges allocated to the fuel facility class.

b. Uranium Recovery Matrix.

Of the \$2.1 million total budgeted costs allocated to the uranium recovery class to be recovered through annual fees, approximately \$870,000 will be assessed to DOE to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining \$1.3 million will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. Because the final FY 1999 annual fees will result in certain uranium recovery licensees going from an annual billing process based on the anniversary date of their license to quarterly billing, those licensees will be billed upon publication of the final FY 1999 rule for the balance of the full FY 1999 annual fee. Payment of the balance of the FY 1999 annual fee will be due on the effective date of the FY 1999 rule.

The NRC has revised the matrix established in FY 1995 to determine the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for

in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed:

(1) The methodology identifies three categories of licenses: conventional uranium mills, solution mining uranium mills, and mill tailings disposal facilities. Each of these categories benefits from the generic uranium recovery program;

(2) The matrix relates the category and the level of benefit, by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements has been further divided into three subelements;

(5) The three major subelements of generic activities related to uranium facility operations are activities related to the operation of the mill, activities related to the handling and disposal of waste, and activities related to prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to decommissioning of facilities and cleanup of land, reclamation and closure of the tailings impoundment, and cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factors and the percentage of the total generic uranium recovery program benefitting the various subclasses are as follows:

| | <u>Level of Benefit</u> | | | |
|----------------------------|-------------------------|-----------------|------------------|----------------|
| | <u>Number of</u> | <u>Weighted</u> | <u>Total For</u> | |
| | <u>Licenses</u> | <u>Factor</u> | <u>Subclass</u> | <u>Percent</u> |
| Class I facilities | 3 | 770 | 2310 | 31 |
| Class II facilities | 7 | 645 | 4515 | 61 |
| 11e(2) disposal | 1 | 475 | 475 | 6 |
| 11e(2) disposal incidental | <u>2</u> | <u>75</u> | <u>150</u> | <u>2</u> |

to existing tailings sites

| | | | | |
|-------|----|------|------|-----|
| Total | 13 | 1965 | 7450 | 100 |
|-------|----|------|------|-----|

4. Annual Fee Determination for Other Classes.

a. Power Reactor Licensees.

The approximately \$267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors is divided equally among the 104 operating reactors. This results in a FY 1999 annual fee of \$2,570,000 per reactor. In addition, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee (see paragraph 4.b.), which for FY 1999 is \$206,000 for each power reactor. This results in a total FY 1999 annual fee of \$2,776,000 for each operating power reactor.

b. Spent Fuel Storage/Reactor Decommissioning.

For FY 1999, budgeted costs of approximately \$24.8 million are to be recovered through annual fees assessed to Part 50 power reactors, except those Part 50 licensees who have permanently ceased operations and have no spent fuel onsite, and to Part 72 licensees who do not hold a Part 50 license. The costs are divided equally among the licensees, resulting in a FY 1999 annual fee of \$206,000 for each licensee.

c. Nonpower Reactors.

Budgeted costs for FY 1999 of approximately \$343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a FY 1999 annual fee of \$85,900.

d. Rare Earth Facilities.

The FY 1999 budgeted costs of approximately \$91,200 for rare earth facilities to be recovered through annual fees are allocated uniformly to the three licensees who have a specific license for receipt and processing of source material. This results in a FY 1999 annual fee of \$30,400.

e. Materials Users.

To equitably and fairly allocate the \$30.5 million in FY 1999 budgeted costs to be recovered in annual fees assessed to the approximately 5700 diverse material users and registrants, the NRC has continued the methodology used in FY 1995 to establish baseline annual fees for this class. The annual fee is based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows:

Annual Fee = (Application Fee + (Average Inspection Cost divided by Inspection Priority)) multiplied by the constant + (Unique Category Costs).

The constant is the multiple necessary to recovery \$30.5 million and is 1.3 for FY 1999. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1999, unique costs of approximately \$955,400 were identified for the medical development program which is attributable to medical licensees. The annual fees for each fee category are shown in §171.16(d).

f. Transportation.

Of the approximately \$3.6 million in FY 1999 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately \$870,000 will be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance DOE holds. Of the remaining \$2.7 million, approximately 10 percent is allocated to holders of approved quality assurance plans authorizing use, and approximately 90 percent will be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use. This results in FY 1999 annual fees of \$2,200 for holders of approved quality assurance plans for use only. The FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use is \$66,700.

5. Administrative Amendments.

a. The NRC is revising §171.9, Communications, to indicate that all communications concerning Part 171 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Office has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

b. The NRC is revising §171.13 to reflect the establishment of an annual fee for power reactors in a decommissioning or possession only status, except those that have no spent fuel onsite.

c. The NRC is revising §171.15 as follows:

(1) The heading for §171.15 is revised to read: Section 171.15 Annual Fees:
Reactor licenses and independent spent fuel storage licenses

(2) Paragraph (b) of §171.15 is revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status that have no spent fuel onsite, and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references are changed from FY 1998 to FY 1999. The activities comprising the base annual fees and the additional charge (surcharge) are listed in §171.15(b), (c), and (d) for convenience purposes.

Each operating power reactor will pay an FY 1999 annual fee of \$2,776,000, which includes the annual fee of \$206,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status, except those who have permanently ceased operations and have no spent fuel on-site, and each Part 72 licensee who does not hold a Part 50 license will pay the spent fuel storage/reactor decommissioning annual fee of \$206,000.

(3) Paragraph (e) of §171.15 is revised to show the amount of the FY 1999 annual fee for nonpower (test and research) reactors. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in §171.11(a)(2).

d. The NRC is revising §171.16 as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section is revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$350,000 to \$5 million will pay a maximum annual fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less

than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

(2) Section 171.16(d) is revised to establish the FY 1999 annual fees for materials licensees, including Federal agencies, licensed by the NRC. The FY 1999 annual fees for materials licenses range from \$600 for a license authorizing the use of source material for shielding, to \$27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. The annual fee for the "master" materials licenses of broad scope issued to Federal agencies is \$358,000.

(3) Footnote 1 of §171.16(d) is being amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. All other licensees and approval holders who held a license or approval on October 1, 1998, will be subject to the FY 1999 annual fees.

Holders of new licenses issued during FY 1999 are subject to a prorated annual fee in accordance with the proration provision of §171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, will not be assessed an annual fee for FY 1999. Thereafter, the full annual

fee will become due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

e. The NRC is revising §171.17 as follows:

(1) Section 171.17(a) is being revised to add an annual fee proration provision for those reactor licensees in a decommissioning or possession only status that have no spent fuel onsite and those Part 72 licensees that do not hold Part 50 licenses. The spent fuel storage/reactor decommissioning annual fee for these licensees will be prorated based on the number of days during the fiscal year the license subject to the annual fee was in effect. This provision is the same as the proration provision provided for operating reactors in this section.

(2) Section 171.17(b) is being revised to exclude Part 72 licenses from the proration provision for materials licenses. The annual fees for Part 72 licenses will be prorated as provided in revised §171.17(a).

f. The NRC is revising Section 171.19 as follows:

(1) Section 171.19(b) is being revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year is

based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

(2) Section 171.19(c) is being revised to update fiscal year references.

As in FY 1998, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than \$100,000 and the revised annual fee for the current fiscal year is \$100,000 or more. In this case, the revised amount will be billed to the licensees upon publication of the final rule in the Federal Register, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 1999, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June

17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1999 before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of their license. Payment will be due on the date of the invoice.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC has:

1. Established a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminated the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all Part 50 power reactor licensees, except those that have permanently ceased operations and have no spent fuel onsite;
2. Established new baseline annual fees for FY 1999.
3. Used revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is establishing the licensing, inspection, and annual fees necessary to recover approximately 100 percent of its budget authority less amounts appropriated from the Nuclear Waste Fund and the General Fund as required by the Omnibus Budget Reconciliation Act of 1990. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of National Cable Television Ass'n, Inc. v. United States, 415 U.S. 352 (1974), and Federal Power Commission v. New England Power Co., 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia Circuit: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Ass'n v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

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

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

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

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

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998, and was amended in FY 1998 to extend the 100 percent fee recovery requirement through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with §171.13, is publishing the amount of the FY

1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed sources and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that--

(1) The annual fees be based on the Commission's FY 1999 budget of \$469.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

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

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

In addition, the NRC's FY 1999 appropriations language provides that \$3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

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

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

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

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1999. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 1999.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not

required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

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

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

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

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

1. The authority citation for Part 170 continues 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, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. In §170.2, paragraph (r) is added to read as follows:

§170.2 Scope.

(r) An applicant for or a holder of a certificate of compliance issued under 10 CFR
Part 76.

3. In §170.3, the definition of the terms Inspections, Materials license, and Special projects are revised to read as follows:

§170.3 Definitions.

Inspection 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, follow up 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;

(3) Reviews and assessments of licensee performance;

(4) Evaluations, such as those performed by Diagnostic Evaluation Teams; or

(5) Incident investigations.

* * * * *

Materials license means a license, certificate, approval, registration, or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72 and 76.

* * * * *

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 reports reviews, early site reviews, waste solidification facilities, route

approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

4. Section 170.5 is revised to read as follows:

§170.5 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

5. In §170.11, paragraph (a)(11) is removed and reserved and paragraph (a)(12) is added to read as follows:

§170.11 Exemptions.

(a) * * *

(12) A performance assessment or evaluation for which the licensee volunteers at the NRC's request and which is selected by the NRC.

* * * * *

6. Section 170.12 is revised to read as follows:

§170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or

adding a new fee category prior to receiving the prescribed application fee. The application fee(s) is charged whether the Commission approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

(b) *Licensing fees.* (1) Licensing fees will be assessed to recover full costs for - -

(i) The review of applications for new licenses and approvals;

(ii) The review of applications for amendments to and renewal of existing licenses or approvals;

(iii) Preapplication consultations and reviews; and

(iv) The full cost for project managers assigned to a specific plant or facility, excluding leave time and time spent on generic activities (such as rulemaking).

(2) Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Commission.

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed, except for costs that were deferred before August 9, 1991. The

deferred costs will be billed as described in paragraphs (b)(5), (b)(6) and (b)(7) of this section. Each bill will identify the applications and documents submitted for review and the costs related to each.

(4) The NRC intends to bill each applicant or licensee for costs related to project manager time on a quarterly basis. Each bill will identify the costs related to project manager time.

(5) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this rule must be paid as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all of the costs are not recovered, within fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the renewal, or remainder of those costs, at that time.

(6) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an

application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(7) (i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of the rule must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR Part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those, at the time.

(iii) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (i.e., all time in a non-leave status will be billed), and the hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

(2) Inspection fees will be assessed to recover the full cost for each specific inspection, including plant- or licensee-specific performance reviews and assessments, evaluations, and incident investigations. For inspections that result in the issuance of an inspection report, fees will be assessed for costs incurred up to approximately 30 days after the inspection report is issued. The costs for these inspections include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) The NRC intends to bill for resident inspectors' time and for specific inspections subject to full cost recovery on a quarterly basis. The fees are payable upon notification by the Commission.

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review. Special projects includes activities such as--

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports; and

(v) 10 CFR 50.71 final safety analysis reports.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review is completed. Each bill will identify the documents submitted for review and the costs related to each. The fees are payable upon notification by the Commission.

(e) *Part 55 review fees.* Fees for Part 55 review services are based on NRC time spent in administering the examinations and tests and any related contractual costs. The fees assessed will also include related activities such as preparing, reviewing, and grading of the examinations and tests. The NRC intends to bill the costs at quarterly intervals to the licensee employing the operators.

(f) *Method of payment.* All license fee payments are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card. Payment of invoices of \$5,000 or more

should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the License Fee and Accounts Receivable Branch at 301-415-7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

7. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

| | |
|-----------------------|----------------|
| Reactor Program | \$141 per hour |
| (§170.21 Activities) | |
| Nuclear Materials and | \$140 per hour |
| Nuclear Waste Program | |
| (§170.31 Activities) | |

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

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

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

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility Categories and Type of Fees

Fees^{1/2/}

* * * * *

K. Import and export licenses:

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

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

Application-new license \$9,100

Amendment \$9,100

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

Application-new license \$5,600

Amendment \$5,600

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

Application-new license \$1,700

Amendment \$1,700

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

| | |
|-------------------------------|---------|
| Application-new license | \$1,100 |
| Amendment | \$1,100 |

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

| | |
|-----------------|-------|
| Amendment | \$210 |
|-----------------|-------|

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

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

* * * * *

9. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees¹

Fee^{2, 3}

1. Special nuclear material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:

Licensing and Inspection Full Cost

- B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):

Licensing and inspection Full Cost

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

Application \$640

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

Application \$1,300

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

Licensing and inspection Full Cost

2. Source material:

A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

Licensing and inspection Full Cost

- (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).

Licensing and inspection Full Cost

- (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).

Licensing and inspection Full Cost

- B. Licenses which authorize the possession, use, and/or installation of source material for shielding:

Application \$150

- C. All other source material licenses:

Application \$5,500

3. Byproduct material:

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

Application \$6,600

- B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:

Application \$2,400

- C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.

Application \$10,200

- D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).

Application \$2,400

- 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 \$1,700

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

Application \$3,300

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

Application \$3,400

- H. Licenses issued under 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. The category does not include 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 \$2,000

- I. Licenses issued under 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. This category does not include 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 \$3,200

- J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application \$1,000

- K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing

redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application \$600

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

Application \$5,500

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

Application \$2,300

- N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application \$2,300

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

Application \$5,800

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

Application \$1,300

4. Waste disposal and processing:

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

Licensing and inspection Full Cost

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

Application \$1,700

- 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 \$2,500

5. Well logging:

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

Application \$6,000

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

Licensing Full Cost

6. Nuclear laundries:

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

Application \$11,200

7. Medical licenses:

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

Application \$6,100

- B. Licenses of broad scope issued to medical institutions or two or more physicians under 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 \$4,400

- C. Other licenses issued under 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 \$2,400

8. Civil defense:

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

Application \$320

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 \$5,200

- 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 \$3,700

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

Application - each source \$1,580

- 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 \$530

10. Transportation of radioactive material:

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

Licensing and inspection Full Cost

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

Application \$390

Inspections Full Cost

11. Review of standardized spent fuel facilities:

Licensing and inspection Full Cost

12. Special projects:⁵

Approvals and preapplication/

Licensing activities Full Cost

Inspections Full Cost

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

Licensing Full Cost

B. Inspections related to spent fuel storage cask Certificate of

Compliance Full Cost

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

chapter Full Cost

14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:

Licensing and inspection Full Cost

15. Import and Export licenses:

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

- A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.

Application - new license \$9,100
Amendment \$9,100

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive

waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

| | |
|-------------------------------|---------|
| Application-new license | \$5,600 |
| Amendment | \$5,600 |

- C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

| | |
|-------------------------------|---------|
| Application-new license | \$1,700 |
| Amendment | \$1,700 |

- D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

| | |
|-------------------------------|---------|
| Application-new license | \$1,100 |
| Amendment | \$1,100 |

- E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other

revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.

Amendment \$210

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.

Application (initial filing of Form 241) \$1,200
Revisions \$200

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

(a) Application fees. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with §170.12(b).

(c) Amendment/revision fees.

Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

(d) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with §170.12(c).

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

³ Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in §170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

⁴ Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license

except for an application that deals only with the sealed sources authorized by the license.

⁵ Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

10. The heading of Part 171 is revised to read as follows:

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

11. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

12. Section 171.9 is revised to read as follows:

§171.9 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

13. Section 171.13 is revised to read as follows:

§171.13 Notice.

The annual fees applicable to any NRC licensee subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the Federal Register as soon as possible but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the

NRC as indicated in §171.19. Quarterly payments of the annual fee of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§171.15 and 171.16 until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, fees would be assessed based on the rates in effect for the previous fiscal year.

14. Section 171.15 is revised to read as follows:

§171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

(b)(1) The FY 1999 annual fee for each operating power reactor is \$2,776,000.

(2) The FY 1999 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$206,000.

(2) This fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (this fee is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not directly attributable to an existing NRC licensee or class of licensees (e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The total FY 1999 surcharge allocated to operating power reactor class of licensees is \$44 million, not including the amount allocated to the new fee class, spent fuel storage/reactor decommissioning. The FY 1999 operating power reactor surcharge to be assessed to each operating power reactor is \$423,000. This amount is calculated by dividing the total operating power reactor surcharge (\$44 million) by the number of operating power reactors (104).

(3) The FY 1999 surcharge allocated to spent fuel storage/reactor decommissioning class of licensees is \$3.2 million. The FY 1999 spent fuel storage/reactor decommissioning surcharge to be added to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$26,500. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licensees, except those that permanently ceased operations and have no fuel onsite, and Part 72 licensees who do not hold a Part 50 license.

(e) The FY 1999 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

| | |
|------------------|----------|
| Research reactor | \$85,900 |
| Test reactor | \$85,900 |

15. Section §171.16 is revised to read as follows:

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

(a)(1) The provisions of this section apply to person(s) who are authorized to conduct activities under--

- (i) 10 CFR part 30 for byproduct material;
- (ii) 10 CFR part 40 for source material;
- (iii) 10 CFR part 70 for special nuclear material;
- (iv) 10 CFR part 71 for packaging and transportation of radioactive material; and
- (v) 10 CFR part 76 for uranium enrichment.

(2) Each person identified in paragraph (a)(1) of this section shall pay an annual fee for each license the person holds at any time during the first six months of the Federal fiscal year (October 1 through March 31). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period October 1 through March 31 of the fiscal year as provided in §171.17 of this section. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If you hold more than one license, the total annual fee you will be assessed will be the cumulative total of the annual fees applicable to the licenses you hold.

(b) The annual fee is comprised of a base annual fee and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (e) of this section. The activities comprising the base annual fee is the sum of the NRC budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities that are recovered under Part 170 of this chapter.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees for as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

| <u>Small Businesses Not Engaged</u> | <u>Maximum Annual Fee</u> |
|-------------------------------------|------------------------------|
| <u>in Manufacturing and Small</u> | <u>Per Licensed Category</u> |
| <u>Not-For-Profit Organizations</u> | |
| <u>(Gross Annual Receipts)</u> | |
| \$350,000 to \$5 million | \$1,800 |
| Less than \$350,000 | \$400 |
| <u>Manufacturing entities that</u> | |
| <u>have an average of 500</u> | |
| <u>employees or less</u> | |
| 35 to 500 employees | \$1,800 |
| Less than 35 employees | \$400 |

Small Governmental Jurisdictions

(Including publicly supported

educational institutions)

(Population)

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

Less than 20,000 \$400

Educational Institutions that

are not State or Publicly

Supported, and have 500 Employees

or Less.

35 to 500 employees \$1,800

Less than 35 employees \$400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on

NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

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

(d) The FY 1999 annual fees, including the surcharge shown in paragraph (e) of this section, for materials licensees subject to fees under this section are shown below:

SCHEDULE OF MATERIALS ANNUAL FEES
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC
(See footnotes at end of table)

| <u>Category of materials licenses</u> | <u>Annual Fees</u> ^{1, 2, 3} |
|---|---------------------------------------|
| 1. Special nuclear material: | |
| A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication | |

activities.

- (a) Strategic Special Nuclear
Material:

| | | |
|-----------------------|--------------|-------------|
| Babcock & Wilcox | SNM-42..... | \$3,281,000 |
| Nuclear Fuel Services | | |
| | SNM-124..... | \$3,281,000 |

- (b) Low Enriched Uranium in
Dispersible Form Used for
Fabrication of Power Reactor
Fuel:

| | | |
|-------------------------------|----------------|-------------|
| Combustion Engineering | | |
| (Hematite) | SNM-33..... | \$1,100,000 |
| General Electric Company | | |
| | SNM-1097 | \$1,100,000 |
| Siemens Nuclear Power | | |
| | SNM-1227..... | \$1,100,000 |
| Westinghouse Electric Company | | |
| | SNM-1107..... | \$1,100,000 |

- (2) All other special nuclear materials
licenses not included in Category 1.A.(1)
which are licensed for fuel cycle activities.

- (a) Facilities with limited operations:

Framatome Cogema SNM-1168.....\$432,000

(b) All Others:

General Electric SNM-960.....\$314,000

B. Licenses for receipt and storage of spent
fuel at an independent spent fuel storage
installation (ISFSI).....See 10 CFR part 171.15(c)

C. Licenses for possession and use of
special nuclear material in sealed sources
contained in devices used in
industrial measuring systems, including
x-ray fluorescence analyzers.....\$1,200

D. All other special nuclear material
licenses, except licenses authorizing
special nuclear material in unsealed
form in combination that would constitute
a critical quantity, as defined in §150.11
of this chapter, for which the licensee
shall pay the same fees as those for
Category 1.A.(2).....\$3,300

E. Licenses or certificates for the operation
of a uranium enrichment facility.....\$2,043,000

2. Source material:

A.(1) Licenses for possession and use of
source material for refining uranium mill
concentrates to uranium hexafluoride.....\$472,000

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

Class I facilities⁴.....\$131,000

Class II facilities⁴..... \$109,000

Other facilities⁴.....\$30,400

(3) Licenses that authorize the receipt of
byproduct material, as defined in Section
11e.(2) of the Atomic Energy Act, from

other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4).....\$81,000

(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2).....\$13,000

B. Licenses that authorize only the possession, use and/or installation of source material for shielding.....\$600

C. All other source material licenses.....\$11,700

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material

- for commercial distribution..... \$26,000
- B. Other licenses for possession and use of
byproduct material issued under
Part 30 of this chapter for processing or
manufacturing of items containing
byproduct material for commercial
distribution.....\$6,300
- C. Licenses issued under §§32.72,
32.73, and/or 32.74 of this chapter
authorizing the processing or
manufacturing and distribution or
redistribution of radiopharmaceuticals,
generators, reagent kits and/or sources
and devices containing byproduct
material. This category also includes the
possession and use of source material
for shielding authorized under Part
40 of this chapter when included on the
same license. This category does not
apply to licenses issued to nonprofit
educational institutions whose
processing or manufacturing is exempt
under 10 CFR 171.11(a)(1). These
licenses are covered by fee Category
3D..... \$15,300
- D. Licenses and approvals issued under

§§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license.....\$3,800

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)..... \$3,400

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for

irradiation of materials in which the
source is not exposed for irradiation
purposes..... \$5,700

G. Licenses for possession and use of
10,000 curies or more of byproduct
material in sealed sources for irradiation
of materials in which the source is
exposed for irradiation purposes. This
category also includes underwater
irradiators for irradiation of materials in
which the source is not exposed for
irradiation purposes.....\$14,800

H. Licenses issued under 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..... \$3,200

I. Licenses issued under Subpart A
of Part 32 of this chapter to distribute
items containing byproduct material

or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter..... \$4,600

J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter..... \$2,100

K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except

specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
generally licensed under Part 31 of this
chapter..... \$1,700

L. Licenses of broad scope for possession
and use of byproduct material issued
under Parts 30 and 33 of this
chapter for research and development
that do not authorize commercial
distribution.....\$11,200

M. Other licenses for possession and use of
byproduct material issued under
Part 30 of this chapter for research and
development that do not authorize
commercial distribution.....\$5,000

N. Licenses that authorize services for
other licensees, except:

- (1) Licenses that authorize only
calibration and/or leak testing
services are subject to the fees
specified in fee Category 3P; and
- (2) Licenses that authorize waste
disposal services are subject to the
fees specified in fee Categories

4A, 4B, and 4C..... \$5,200

O. Licenses for possession and use of
byproduct material issued under
Part 34 of this chapter for industrial
radiography operations. This category
also includes the possession and use of
source material for shielding authorized
under Part 40 of this chapter when
authorized on the same license.....\$14,700

P. All other specific byproduct material
licenses, except those in Categories 4A
through 9D..... \$2,600

4. Waste disposal and processing:

A. Licenses specifically authorizing the
receipt of waste byproduct material,
source material, or special nuclear
material from other persons for the
purpose of contingency storage or
commercial land disposal by the
licensee; or licenses authorizing
contingency storage of low-level
radioactive waste at the site of nuclear
power reactors; or licenses for receipt of
waste from other persons for

incineration or other treatment,
packaging of resulting waste and
residues, and transfer of packages to
another person authorized to receive or
dispose of waste material..... N/A⁵

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.....\$11,300

C. Licenses specifically authorizing the
receipt of prepackaged waste byproduct
material, source material, or special
nuclear material from other persons.
The licensee will dispose of the material
by transfer to another person authorized
to receive or dispose of the material.....\$8,400

5. Well logging:

A. Licenses for possession and use of
byproduct material, source material,
and/or special nuclear material for well

logging, well surveys, and tracer studies
other than field flooding tracer studies..... \$9,900

B. Licenses for possession and use of
byproduct material for field flooding
tracer studies..... N/A⁵

6. Nuclear laundries:

A. Licenses for commercial collection and
laundry of items contaminated with
byproduct material, source material,
or special nuclear material.....\$18,900

7. Medical licenses:

A. Licenses issued under Parts 30,
35, 40, and 70 of this chapter for human
use of byproduct material, source
material, or special nuclear material in
sealed sources contained in teletherapy
devices. This category also includes the
possession and use of source material
for shielding when authorized on the
same license.....\$15,300

B. Licenses of broad scope issued to
medical institutions or two or more
physicians under Parts 30, 33, 35,

40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.⁹\$27,800

C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.⁹\$5,800

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities..... \$1,200

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

- A. Registrations issued for the safety
evaluation of devices or products
containing byproduct material, source
material, or special nuclear material,
except reactor fuel devices, for
commercial distribution.....\$6,000
- B. Registrations issued for the safety
evaluation of devices or products
containing byproduct material, source
material, or special nuclear material
manufactured in accordance with the
unique specifications of, and for use
by, a single applicant, except reactor
fuel devices.....\$4,300
- C. Registrations issued for the safety
evaluation of sealed sources containing
byproduct material, source material,
or special nuclear material, except
reactor fuel, for commercial distribution.....\$1,800
- D. Registrations issued for the safety
evaluation of sealed sources containing
byproduct material, source material,
or special nuclear material,

manufactured in accordance with the
unique specifications of, and for use by,
a single applicant, except reactor fuel.....\$600

10. Transportation of radioactive material:

- A. Certificates of Compliance or other
package approvals issued for design of
casks, packages, and shipping
containers.

Spent Fuel, High-Level Waste, and
plutonium air packages..... N/A⁶

Other Casks..... N/A⁶

- B. Quality assurance program approvals issued
under 10 CFR Part 71

Users and Fabricators.....\$66,700

Users.....\$2,200

11. Standardized spent fuel facilities..... N/A⁶

12. Special Projects..... N/A⁶

13. A. Spent fuel storage cask Certificate of
Compliance..... N/A⁶

| | | |
|-----|--|---------------------------------|
| B. | General licenses for storage of spent fuel under 10 CFR 72.210..... | N/A (See 10 CFR Part 171.15(c)) |
| 14. | Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter..... | N/A ⁷ |
| 15. | Import and Export licenses..... | N/A ⁶ |
| 16. | Reciprocity..... | N/A ⁸ |
| 17. | Master materials licenses of broad scope issued to Government agencies..... | \$358,000 |
| 18. | Department of Energy: | |
| A. | Certificates of Compliance..... | \$872,000 |
| B. | Uranium Mill Tailing Radiation Control Act (UMTRCA) activities..... | \$869,000 |

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. Annual fees for licensees who filed for termination of a

license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

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

⁵ There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

⁶ Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

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

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

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

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

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

16. Section 171.17 is revised to read as follows:

§171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors and Part 72 licensees who do not hold Part 50 licenses. The annual fees for power and nonpower reactors and those Part 72 licensees who do not hold a Part 50 license that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full annual fee is due and payable each subsequent fiscal year. The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the fiscal year will be prorated on the basis of the number of days remaining in the fiscal year after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those Part 72 licensees who do not hold a Part 50 license who request termination of the Part 72 license and permanently cease activities authorized by the license during the fiscal year based on the number of days the license was in effect prior to receipt of the termination request.

(b) Materials licenses (excluding Part 72 licenses included in §171.17(a)). (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

(2) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary

circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications to downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

17. Section 171.19 is revised to read as follows:

§171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of \$5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of \$100,000 or more and described in the Federal Register notice issued under §171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1998 was less than \$100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 1999 is \$100,000 or more (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the FY 1999 annual fee, less any payments received for FY 1999 based on the anniversary date billing process.

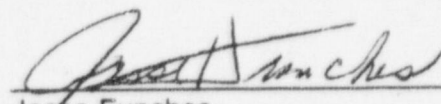
(c) Annual fees that are less than \$100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

(d) Annual fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 3rd day of June, 1999.

For the Nuclear Regulatory Commission.


Jesse Funches,
Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

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

i. Background.

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 et seq.) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in §171.16(c) of this final rule are based on the NRC's size standards

The Omnibus Budget Reconciliation Act (OBRA-90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to

recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 1999 is approximately \$449.6 million.

Since 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

Because the NRC is establishing a new annual fee class for FY 1999 and based on program changes that have occurred, the NRC is establishing new baseline annual fees this fiscal year. This rebaselining results in an increase in the annual fees charged to some categories of materials licensees.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 1999 fee rule as required by law.

II. Impact on small entities.

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an competitive extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses

to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

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

Since annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

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

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

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

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

The NRC established, and is continuing for FY 1999, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1999, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, will pay for most of the FY 1999 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing for FY 1999, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of \$1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in each year since 1992, the NRC is continuing the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of \$400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. Therefore, even though the rebaselined annual fees will result in increased annual fees charged to several categories of materials licensees, licensees who qualify as small entities will not be adversely affected.

III. Summary.

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions established in previous fee rules remain valid for FY 1999.

U. S. Nuclear Regulatory Commission
Small Entity Compliance Guide
Fiscal Year 1999

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees in complying with the FY 1999 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 1999 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. **Small business** - a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;
2. **Manufacturing industry** - a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;
3. **Small organization** - a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;
4. **Small governmental jurisdiction** - a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;
5. **Small educational institution** - an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees¹

NRC Small Entity Fees

¹ An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

In 10 CFR 171.16 (c), the NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

| <u>Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts)</u> | <u>Maximum Annual Fee Per Licensed Category</u> |
|---|---|
| \$350,000 to \$5 million | \$1,800 |
| Less than \$350,000 | \$400 |
| <u>Manufacturing entities that have an average of 500 employees or less</u> | |
| 35 to 500 employees | \$1,800 |
| Less than 35 employees | \$400 |
| <u>Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)</u> | |
| 20,000 to 50,000 | \$1,800 |
| Less than 20,000 | \$400 |
| <u>Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less</u> | |
| 35 to 500 employees | \$1,800 |
| Less than 35 employees | \$400 |

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the annual fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.
2. Complete all items on NRC Form 526 as follows:
 - a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.
 - b. The Standard Industrial Classification (SIC) Code should be entered if it is known.
 - c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.
 - d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:
 - (1) The size standards apply to the licensee, not the individual authorized users listed in the license.
 - (2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

- (3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.
- (4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$1,800 or \$400 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$900 or \$200 for each fee category billed instead of the full small entity annual fee of \$1,800 or \$400.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC-under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found at 10 CFR Part 13.