Quantum Marine, Inc., 2 New Road, suite 201, Aston, Pennsylvania 19014, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, DC 20229 (202–566–2446).

Dated: July 3, 1991.

Lyal V.S. Hood,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 91-16404 Filed 7-9-91; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 132
Wednesday, July 10, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 26, 1991
9:00 a.m. to 5:00 p.m., July 27, 1991

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

Discussion of grant awards, the FY 1992 Grant Guideline, and an evaluation of the Institute's impact on the State courts.

Portions Closed to the Public

Discussion of internal personnel issues.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 91–16574 Filed 7–8–91; 3:44 pm]

BILLING CODE 6820-SC-M

federal register

Wednesday
July 10, 1991

Part II

Nuclear Regulatory Commission

10 CFR Parts 52, 71, 170, and 171

Revision of Fee Schedules; 100 Percent Fee Recovery; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 52, 71, 170, and 171

RIN: 3150-AD87

Revision of Fee Schedules; 100% Fee Recovery

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the regulations governing the licensing, inspection, and annual fees charged to its licensees. The amendments are necessary to implement Public Law 101-508, passed by the Congress on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority ($465 million) in Fiscal Year (FY) 1991, and the four succeeding years. This final rule affects all applicants, licensees, and holders of certificates of compliance, registrations of sealed sources and devices, approvals of quality assurance (QA) programs, and other approvals. The final rule increases fees substantially for those entities currently subject to fees. Other entities previously exempt from fees become subject to the fees in the final rule.

EFFECTIVE DATES: August 9, 1991.

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

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the Commission collects fees under 10 CFR parts 170 and 171. 10 CFR part 170, "Fees for Facilities and Materials Licenses and Other Regulatory Services" implements Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). The license and inspection fees assessed under 10 CFR part 170 recover the costs to the NRC of providing individually identifiable services to specific applicants for, and holders of, NRC licenses and approvals. For example, fees are charged under 10 CFR part 170 for the NRC reviews of applications for new licenses, reviews of renewals and amendments to existing licenses, and inspections of applicants' and licensees' facilities. The fee schedules contained in 10 CFR part 170 were last revised on May 23, 1990 (55 FR 21173) (effective July 2, 1990). These fees were based on the FY 1990 budget.

10 CFR part 171, "Annual Fees for Power Reactor Operating Licenses", initially established in FY 1987, implements section 3201 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) by charging an annual fee to NRC operating power reactor licensees (55 FR 7610; March 2, 1990). The annual fees recover NRC budgeted costs for generic regulatory activities relating to these licensees. The amount collected in FY 1990 from annual fees, when added to the amounts recovered under 10 CFR part 170 and the Nuclear Waste Fund (NWF), was approximately 45 percent of the NRC budget. For FY 1991, the previous Public Law required the Commission to recover $157 million or 33 percent of its budget. On this basis, the NRC published the FY 1991 annual fees for operating power reactors based on 33 percent of the President's budget of $475 million on August 17, 1990 (55 FR 33789).

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), signed into law on November 5, 1990, requires that the NRC recover 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing license, inspection, and annual fees.

On April 12, 1991 (56 FR 14870-14896), the Commission published in the **Federal Register** a notice of proposed rulemaking that would amend the provisions of 10 CFR parts 170 and 171. This action was necessary for the Commission to comply with Public Law 101-508 and to more completely recover costs incurred by the Commission in providing services to identifiable recipients. The notice of proposed rulemaking invited interested persons to submit written comments for consideration in connection with the proposed amendments on or before May 13, 1991. In addition, the Commission's staff has been available to answer questions concerning the proposed rulemaking. As such, the NRC responded to numerous phone calls and held several meetings to respond to questions regarding the proposed fees. Summaries of these meetings have been placed in the Public Document Room. The Commission placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L Street, NW., Washington, DC in the lower level of the Gelman Building. Workpapers relating to this final rule will also be placed in the Public Document Room.

II. Analysis of Legislation

Public Law 101-508, title VI, subtitle B, section 6101, states the new requirements for user fees and annual charges, which are summarized as follows in the Conference Report to the legislation, (101st Cong., 2d Sess., 136 Cong. Rec. H. 12692-93 (daily ed. October 26, 1990)):

Subsection (a)(1) requires the NRC to collect fees and annual charges.

Subsection (a)(2) provides that the first assessment made under this authority shall be made no later than September 30, 1991.

Subsection (a)(3) provides that the last assessment of annual charges made under this authority shall be made no later than September 30, 1995.

Subsection (b) provides that the NRC shall continue to collect fees under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). These fees are intended to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC.

Subsection (c) requires the NRC to collect, in addition to the Independent Offices Appropriation Act fees under subsection (b), an annual charge.

Subsection (c)(1) authorizes the NRC to impose an annual charge on any licensee of the NRC.

Subsection (c)(2) provides that the aggregate amount of annual charges shall, when added to the Independent Offices Appropriation Act fees collected under subsection (b), equal approximately 100 percent of the NRC's total budget authority for each fiscal year, less any amount appropriated to the NRC from the Nuclear Waste Fund.

Subsection (c)(3) directs the NRC to establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees. The schedule may assess different annual charges for different licensees or classes of licensees based on the allocation of the NRC's resources among licensees or classes of licensees, so that the licensees who require the greatest expenditures of the NRC's resources will pay the greatest annual charge.

Subsection (d) defines the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(c).

Subsection (e) amends section 7601 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272) to preserve existing authority for the NRC to collect user fees approximating 33 percent of the agency's budget. Following fiscal year 1995, annual charges will be assessed under section 7601 of the 1985 act instead of subsection (c) of the conference agreement.

In the Conference Report, the Congress suggested guidelines that NRC should follow in calculating the annual fee to be assessed. The conferees recognized in directing the Commission to collect the annual fees that, "Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties" and that Congress must provide the agency "intelligible guidelines" for making these assessments. 136 Cong. Rec. at H12692, citing *Skinner* v. *Mid-America Pipeline Co.*, 109 S. Ct. 1726, 1734 (1989). The Conferees stated their belief that "the conference agreement meets these requirements." Id. at H12692. The specific guidelines are as follows:

First, the appropriations received by the NRC from the NWF established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) for licensing the DOE's nuclear waste management program are not to be recovered by the annual charges and should be subtracted from the amount of the budget authority.

Second, the amount recovered through annual charges is to be reduced further by the amount the NRC receives through fees assessed on licensees under the IOAA through part 170 of the Commission's regulations. The part 170 fees are intended to recover the costs to the NRC of providing individually identifiable services to applicants and holders of NRC licenses. Part 170 fees are not intended to recover the cost of generic activities that benefit licensees generally. The Committee expects the NRC to continue to assess fees under the IOAA so that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services the licensee or applicant receives.

Third, Public Law 101–508 provides, and the Conference Agreement reiterates, that the balance (after subtracting the amounts estimated to be received from the NWF and part 170) of the NRC's annual budget is to be recovered from the NRC's licensees through annual charges. The annual charge should be assessed under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charges. The schedules of annual charges, which are to be established by rule, should "fairly and equitably" allocate the total amount of the charges to be recovered from the NRC's licensees and, to the "maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to the licensees. 136 Cong. Rec. at H12692. The conferees recognized that a substantial portion of the NRC's annual expenses, while not attributable to individual licensees and thus not recoverable under the IOAA, are attributable to classes of licensees. Thus, the conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to that class. The conferees recognized that certain expenses cannot be attributed either to an individual or to classes of NRC licensees. The conferees intend that the NRC fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. 136 Cong Rec. at H12692, 3.

Fourth, the conferees note that the U.S. Court of Appeals for the District of Columbia Circuit, in affirming NRC's part 171 fee schedule, concluded that the agency "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765, 770 (D.C. Cir. 1988), *cert denied*, 109 S. Ct. 1952 (1989)).

Finally, the conferees noted that, under its existing rules, the NRC does not offset amounts paid by licensees as fines and penalties (including interest penalties) against the amount of annual charges to be collected. In addition, the NRC does not seek to recover through the annual charge amounts received from participants in the cooperative nuclear safety research program, the material and information access authorization programs (including criminal history checks under section 149 of the Atomic Energy Act of 1954, 42 U.S.C. 2169), or amounts received for services rendered to foreign governments and international organizations. "The conference agreement does not change these policies. Fines and penalties are assessed because of a failure of a licensee to comply with NRC standards and requirements. The purpose of the fine or penalty would be defeated if their assessment would result in a lowering of the offender's obligation to pay annual charges. Receipts from cooperative, international, and access authorization programs are collected from the entities benefitting from the particular program and are retained and used by the NRC for that program. Inclusion of the amount of these funds in the total amount recovered through the annual charge would result in double payment." 136 Cong. Rec. at H12693

III. Responses to Comments

Three hundred thirty-four (334) public comments were received by the close of the comment period on May 13, 1991. The Commission has considered an additional 114 comments which were received by close of business on May 17, 1991, for a total of 448 public comments.

Of the 448 comments received, 413 were from persons concerned with other than power reactors (including States and local government agencies) and 35 were from utility licensees, and their representatives including owners groups concerned about fees for part 50 facilities. Thirteen letters were also received from other Federal agencies. Copies of all comment letters are available at the Public Document Room.

Many of the comment letters raised similar questions. These comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments have been grouped into three major areas—legal, policy, and specific fee issues.

A. Legal Issues

Several of the commenters raised questions concerning NRC's legal interpretation of the Public Law. These comments are addressed first because their resolution establishes the framework within which to address subsequent policy and specific fee issues raised by the comments.

1. Assessment and Collection of Annual Fees

Comment. Several commenters raised the question as to whether the Public Law requires the Commission to assess and collect fees by September 30, 1991, as indicated in the proposed rule, or to only assess fees by September 30, 1991, with licensees having the option of paying some of the revised fees after the end of FY 1991.

Commenters cite title VI, subtitle B, section 6101, subsection (a)(2), as providing that the first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991. This provision, commenters argue, means that the NRC must determine the fee amounts and bill the licensees by September 30, 1991, but it does not mean that the fees must be collected by that date. The commenters indicate that collection by September 30 would not be possible if the Commission waited until that date to assess the charge, as the law would allow. Most commenters indicated that the Commission should bill licensees for the revised annual fees by the end of FY 1991, but defer the collection of the fees for a reasonable amount of time. They argue further that the Energy and Water Development Appropriations Act of 1991, passed a week after the Omnibus Budget Reconciliation of 1990 (OBRA), indicates that revenues from licensing fees amounting to only $153.5 million or 33% of the budget need be recovered (collected) by the NRC in FY 1991.

Response. The Commission believes that OBRA is the controlling legislation for recovery of 100 percent of the budget authority and believes that the correct interpretation of the law and the intent of Congress are that it directed the NRC to both assess and collect fees that approximate 100 percent of the budget authority for FY 1991–1995. Section (c)(2) of the law reads that "the aggregate amount of the annual charge *collected* (emphasis added) from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected * * *". Section (3) goes on to indicate that "the Commission shall establish by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees." The Commission interprets this language as requiring in FY 1991:

(1) The allocation of 100 percent of the NRC budget authority among licensees;

(2) The establishment of the fees by rule; and

(3) The collection of 100 percent of the budget authority.

However, even if it were not mandated to do so, the Commission believes as a matter of policy that it should collect FY 1991 annual charges by the end of FY 1991. A primary purpose of the 1990 OBRA legislation, of which the NRC user fee provision is a part, is to reduce the Federal budget deficit for FY 1991. This objective can only be achieved by the collection of fees and charges by the end of that fiscal year. Additionally, by requiring payments to be made this fiscal year, the Commission would be following both normal and prudent billing practice, as well as continuing its policy of previous years of requiring payment of part 171 annual charges by the end of the fiscal year in question.

The Commission recognizes that the timing of the FY 1991 annual fee bills is not ideal, but as noted, the NRC must collect the FY 1991 budget in FY 1991. To minimize the financial impact, however, the Commission has decided that the first quarter FY 1992 bills will not be due until after the beginning of the second quarter of FY 1992.

2. Collect 100 Percent of Budget Authority

Comment. Several commenters indicated that the language in title VI, subtitle B, section 6101, subsection (c)(2) of the law which states that the "annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority" permits the Commission to explicitly exclude costs other than those recovered from the Nuclear Waste Fund from fee assessment.

Commenters from the power reactor industry questioned certain costs allocated to them based on Commission policy decisions. They indicated that some of these costs should not be charged and that the law, by its use of the words "approximately 100 percent" provides discretion for the Commission to exclude some costs from fee assessment (e.g., costs not attributable to a licensee, costs resulting from exempting nonprofit educational institutions, etc.).

Response. The Commission interprets the words "approximately 100 percent" as meaning that the Commission should promulgate a rule that identifies and allocates as close to 100 percent of its budget authority to the various classes of NRC licensees as is practical. This interpretation is supported by the Conference Report which states that "the conferees recognize that there are expenses that cannot be attributed either to an individual licensee or a class of licensees. The conferees intend the NRC 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." Thus, the Commission concludes it was Congress' intent that the Commission allocate 100 percent of its budget authority for fee assessment, and that the term "approximately 100%" refers only to the inherent uncertainties in estimating and collecting the fees. These uncertainties may result in collecting less than the budgeted amount in which case NRC would not be required to collect additional fees; or collection of slightly more than the budget, in which case NRC would not be required to make refunds.

3. Assessment of Fees to All Classes of Licensees

Comment. Several commenters stated that the NRC is required to assess license fees and/or annual fees on all licensees where legally permissible in order to recover 100 percent of the budget authority. Commenters indicated that as a matter of consistency the NRC should recover its costs from any person or organization that receives NRC services and, therefore, there should be no exemption for nonprofit educational institutions, for example. In support of its argument, one commenter cites the statement in the Public Law that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." Others commented that the continued exemption for nonprofit educational institutions "violates the Congressional directive to recover costs of agency programs from those whom the programs benefit."

Response. The Commission concludes that it is not required to assess license fees and annual fees to all classes of licensees. For part 170 fees, for example, OMB Circular No. A–25, the implementing governmentwide policy guidance for the IOAA, indicates in item 5.(b).(3)., that an agency may make exceptions to the general policy, and not assess fees for recipients engaged in a nonprofit activity designed for the public safety, health and welfare. Similarly, item 5.(b).(4). indicates that an exception may be made from the payment of the full fee by a State, local government or non-profit group when it would not be in the interest of the program.

For part 171 annual fees, the Public Law, in defining persons subject to the annual charges, states that "any licensee of the Commission *may* (emphasis added) be required to pay * * * an annual charge." Therefore, the Commission has discretion with regard to whom to assess license fees under part 170 and annual fees under part 171.

4. Annual Fees for Federal Agencies

Comment. Several Federal agencies licensed by the NRC commented that they should not be assessed annual fees under part 171 simply because they are NRC licensees. These agencies believe that to assess these fees violates the IOAA, and does not further the Congressional intent of NRC user fee legislation, which is to reduce the Federal budget deficit.

Response. In the supplementary information to the proposed rule, the Commission indicated that it is precluded under the IOAA from charging Federal agencies for "identifiable services rendered" under part 170. Public Law 101–508, the authority for the part 171 annual fees, is silent on the subject of charging Federal agencies. However, it does not bar such action, and allows collection of fees from "any person" and "all licensees." Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, section 6101, 104 Stat. 1388–298,299 (1990). The Public Law, in defining persons subject to the annual charge, states that "any licensee of the Commission may be required to pay * * * an annual charge." The Commission further notes that "persons" as defined in section 11s. of the Atomic Energy Act, includes Federal agencies (except for portions of the Department of Energy) and all licensees are "persons". Given this Congressional language, the Commission believes it legally permissible to consider Federal agencies with an NRC license as falling into the above categories, and is assessing them an annual fee accordingly.

5. Export Licensing Fees

Comment. A few commenters suggested that charging a fee for issuing export and import licenses, as proposed in Category K of § 170.21, and Category 15 of § 170.31, is a tax in violation of Article I, section 9 of the U.S. Constitution. The commenters also stated that according to an NRC publication, the reason for such licenses is to "enhance U.S. national security by preventing" nuclear proliferation. Therefore, because the service provides benefits for the U.S. Government and its citizens, it is improper to bill those seeking licenses.

Response. The Commission is following its mandate from Congress to charge based on "a reasonable relationship to the cost of * * * services * * *." The fees in question here are directly related to the cost of issuing export and import licenses, and therefore are not a tax or duty. The resulting charge therefore does not violate Article I, section 9 of the U.S. Constitution. Further, there is no compelling justification for not charging these entities fees.

As for the claimed improper purpose, the courts have held that the NRC may assess fees under part 170 for services that mutually benefit the recipient and the public. Prorating of costs on the basis of benefit to the public is not required. *Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (1979); *cert. denied*, 444 U.S. 1102 (1980).

One commenter claimed that no other U.S. agency charges for export licenses. This is incorrect. The Fish and Wildlife Service within the U.S. Department of the Interior charges a fee for wildlife export/import licenses. See 50 CFR 13.11(d) (1990).

6. Publish the Final Rule as an Immediately Effective Rule

Comment. Several commenters questioned the intent of the NRC to publish the final rule as effective upon publication without the normal 30 day period between publication and effective date. Some commenters believed that the Commission must offer a period of time after publication of the final rule to allow licensees to drop out of the licensed activity and to terminate their licenses to avoid payment of the new fees. An immediately effective final rule would not provide such an opportunity.

Response. The Commission has adopted the recommendation of numerous commenters and will promulgate parts 170 and 171 with an effective date 30 days after publication of the rule in the **Federal Register**. However, in order to effectuate 100% recovery of its budget authority, the Commission will send out the part 171 bills upon publication of the rule in the **Federal Register**. The bills would become due and payable on the effective date of the rule. This approach is authorized by NRC's debt collection regulations in 10 CFR part 15. Licensees and holders of certificates, registrations, and approvals are expected to pay these bills promptly. In order to avoid interest payments and penalties the bill must be paid within 30 days from the effective date of the rule.

Licensees, and holders of certificates, registrations, and approvals who wish to apply to the Commission for an exemption from all or part of their Fiscal Year 1991 part 171 annual fees must ensure that exemption requests, submitted pursuant to § 171.11, are received by the Commission on or before the effective date of the rule. With respect to timely filed exemption requests before the effective date of the rule, the Commission will act on those requests and will inform the requestor whether the sums will still be due during the pendency of the review of the request. No such assurance can be provided for exemption requests filed after the effective date of rule. Exemption requests or any requests to clarify the bill will not, per se, extend the interest-free period for payment of a bill. As stated above, the bills are due and payable on the effective date of the rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

The Commission wishes to emphasize that licensees, and holders of certificates, registrations, and approvals who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1991, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Licensees and holders of certificates, registrations and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the Commission for a waiver of the FY 1991 annual fee.

7. Publish Final Rule as an Interim Rule

Comment. A few commenters suggested that the Commission publish the final rule as an "interim" rule, and schedule a further rulemaking to address inequities revealed during implementation and to allow the NRC to seek clarification or modification of its authority from Congress, if necessary.

Response. The Commission does not see the utility of publishing the final rule as an "interim" rule. In any case, any future changes in the rule, whether or not called "interim" would have to be effected through notice and comment rulemaking. Further, regardless of how a rule is characterized, it is the Commission's practice to monitor the implementation of its rules, and to amend them as dictated by experience.

B. Major Policy Issues

The commenters raised three major policy issues related to the proposed fee rule. As with the legal issues, the resolution of these policy issues helped frame the resolution of subsequent specific fee issues.

1. Assessing Costs Not Attributable to an NRC Licensee

Comment. Many comments were received from utilities and their representatives indicating that the NRC has not followed Congress' mandate by allocating certain costs to power reactors that these licensees contend are not attributable to them (e.g., uranium enrichment, DOD/DOE projects, international programs, etc.). These costs, they point out, should either be assessed as broadly as practicable in order to minimize the burden of the costs on a licensee or class of licensee or should be treated as activities in the national interest (e.g., international programs) and not charged at all. They also suggested that some costs should be assessed to applicants for licenses (e.g., uranium enrichment generic costs).

Response. As stated in the discussion of the legal issues, the Commission must collect approximately 100 percent of its budget in fees, even though in some instances certain activities are not attributable to an existing NRC licensee. These latter costs must be assessed upon someone. It is clear that under the legislation the NRC is only permitted to assess these costs to NRC licensees. It may not assess annual fees upon license applicants. Therefore, NRC must assess these costs on its existing licensees. As explained in the proposed rule, the Commission believes that it is appropriate to assess these costs based on the Conference Report guidance that the costs be "recovered from such licensees as the Commission in its discretion determines can fairly, equitably and practicably contribute to their payment." The Commission has determined that operating power reactor licensees can more equitably and practicably pay these costs than other NRC licensees, particularly in view of the substantial new annual fees being assessed to other licensees. The overwhelming portion of the Commission's budget is devoted to the regulation of power reactors and, therefore, it is only just that these entities pay for all but a small portion of the Commission's budget. Therefore, the Commission is assessing the $15.7 million in budgeted costs for activities not attributable to an existing NRC licensee or class of licensee to operating power reactors as indicated in the proposed rule.

2. Consideration of Non-Safety Impacts in Assessing Fees

Comment. Most of the commenters indicated that the proposed rule would result in some type of impact on the licensee. For example, most of the over 200 comments from medical licensees expressed the opinion that the proposed fees, particularly the annual fees, would be a "death warrant" to nuclear medicine departments, would adversely affect patients' medical costs, and would result in reduced health care. Many medical licensees commented that small health care facilities would have difficulty continuing to operate if the "exorbitant" annual fees are assessed, and that the increased fees seem contrary to the process of cost containment and regulatory constraint of compensation for medical care.

Approximately 100 comments were received from well loggers, radiographers, and gauge users indicating that the annual fees would create severe hardships for the companies, and would prohibit them from providing well logging, radiography, or gauge services. Many of the commenters suggested they will either have to terminate their license or move to an Agreement State which does not charge fees as high as those of NRC. Other commenters argued that they are small businesses with a few employees operating in a recessionary economy and competing against worldwide operations and huge foreign-owned companies. Many point out it will be impossible for their companies to pass on the proposed fee increases to clients and remain competitive in a small and severely depressed market.

The uranium recovery licensees stated that the proposed fees would have a significant adverse economic impact and will only further weaken the already non-viable domestic uranium mining and milling industry. Another commenter stated that the annual fees will dictate abandonment and decommissioning of uranium mills.

Fuel facilities licensees noted that the proposed fees would reduce the ability of U.S. based nuclear companies to compete in the world market and increase the potential for loss of U.S. jobs and economic dislocation. One commenter noted that the annual fee could force it to cease UF_6 conversion activities which could result in impaired national security.

The transportation class of licensees indicated that if the fees forced termination of the licenses, or Certificates of Compliance, a limited number of casks would be available for transport of spent fuel in the event of a reactor shutdown as well as for DOE and defense contracts. They noted that this could adversely affect safety and national security. The transportation licensees also indicated that these fees could become a barrier to free trade and competition because smaller vendors, with limited resources, would not be able to maintain a competitive position. Another commenter noted that the fees are expected to become a significant constraint on the development of newer and safer transportation and spent fuel storage casks.

Power reactor licensees stated the fees would have major impacts on the economic health of the licensees and the nature of NRC/licensee interaction, possibly to the detriment of the public interest, if not public health and safety. Others noted that the fees could divert available funds from operations and maintenance resulting in deferring plant improvements. Nonpower reactor licensees noted that the imposition of the annual fee would likely cause the shutdown of some nonpower reactors.

Response. These comments regarding impacts on the nuclear industry have been carefully considered. The Commission recognizes that there will be adverse impacts from implementing the legislation. However, to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. Because the Public Law requires the NRC to assess and collect approximately 100 percent of its budget authority, a reduction in the fees assessed for one class of licensee would require a corresponding increase in the fees assessed for another class. Therefore, the impacts noted cannot be eliminated without creating adverse effects for other licensees. For this reason, consideration has been given only to the effects that NRC is required to consider by law (i.e., the Atomic Energy Act, the Energy Reorganization Act, and the Regulatory Flexibility Act).

With regard to the health and safety responsibility and national defense requirements of the Atomic Energy Act and the Energy Reorganization Act, there is insufficient evidence supporting the commenters' claims of significant adverse effects. Therefore, no modification to the fees is included as a result of unsupported claims of safety impacts. However, implementation of the rule will be monitored and action taken as necessary if there are clear health and safety problems that arise.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires consideration of the effect of regulations on small entities. These considerations must be documented and made available to the public in a Regulatory Flexibility Analysis. This analysis is discussed in the next issue.

3. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that, consistent with the objectives of the rule and applicable statutes, the NRC consider the impact on small entities. The applicable statute in this case, Public Law 101–508, has a mandate of recovering 100 percent of the NRC's budget authority through fees. The Conference Report accompanying the legislation indicates a goal of assessing costs attributable to a class of licensees to that class. The Regulatory Flexibility Act requires that the NRC consider alternatives to minimize the economic impact of its regulations on small entities. These two laws are inherently in conflict if taken literally, in that assessing costs attributable to the materials class of licensees to that class of licensees will cause a significant impact on a substantial number of small entities. However, as indicated in the response to the legal questions, NRC must assess all of its costs, but has discretion with regard to which licensees shall be assessed and the amounts charged to and within each class of licensee. Similarly, the Commission is not required to eliminate or even reduce the impact on small business, but is required to evaluate these impacts and explain its decision.

The Regulatory Flexibility Analysis is included in this final rule as appendix A to this document. This analysis evaluates the impact on small entities and, based on the comments received, concludes that there will be a significant impact on a substantial number of small entities. Alternatives to minimize the impacts were also evaluated. Given the conflicting goals of Public Law 101–508 and the Regulatory Flexibility Act, the Commission has determined that the impact on small entities be reduced, not necessarily eliminated, by establishing a maximum annual fee of $1,800 per fee category for small entities. For each category, a materials licensee would pay the annual fee (base annual fee plus the surcharge) or $1,800, whichever is less. To pay a reduced fee, a licensee must certify, using NRC Form 526 which will be enclosed with the bill, that it meets NRC's size standards for a small entity. The size standards were defined in the **Federal Register** on December 9, 1985 (50 FR 50241). Licensees that do not meet these criteria for small entities would be assessed the full annual fees established for the various classes of licensees in the final rule. The cost that would not be collected from the small entities, approximately $4.9 million, will be allocated as a surcharge to large entities licensed by the NRC as follows: $4.3 million to power reactor licensees and $.6 million to large entities licensed under the materials program. This allocation is based on the percent of the budget attributable to each class of licensees.

C. Specific Fee Issues—Part 170

1. Assessment of Fees to Nonprofit Educational Institutions

Comment. The Commission invited public comment on this issue. Many public comments were received on whether or not to continue the exemption from fees for nonprofit educational institutions. A large majority of the comments were received from nonprofit educational institutions supporting the continuation of the current exemption in § 170.11(a)(4). These commenters indicated that nonprofit educational institutions have limited abilities to recover the increased regulatory costs. They stated that the exemption has benefitted the public over the years by facilitating academic research and educational use of licensed materials, work that both furthers understanding of important research questions and provides training in nuclear science. Others commented that nonprofit educational institutions are perhaps the least able to contribute to the payment of fees.

Comments were also received indicating that, as a matter of consistency, the NRC should recover its costs from any person or organization which receives NRC services, including nonprofit educational institutions. These commenters claimed that the Commission no longer has the discretion to exempt certain classes of licensees because the Public Law, citing IOAA, directs that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing such service or thing of value." Commenters pointed out that, if such an exemption were authorized, it would be more fair and equitable to allocate the costs among all licensees, not just operating power reactors, because all licensees, as well as the NRC, benefit from the training provided by nonprofit educational institutions to future engineers and other professionals in nuclear related fields. Another commenter noted that while voluntary charitable contributions to educational institutions are desirable, involuntary charitable assessments to operating power reactors are inconsistent with Congressional directives. They also suggested that if the Commission exempts these institutions from fees, then it should remove their costs ($2.2 million) from the license fee base and not recover them. Other commenters indicated that for equity and fairness, nonprofit educational institutions should be required to pay the same fees as those being imposed on similar facilities operated by a for-profit corporation or nonprofit organizations that are not educational.

Response. As discussed in the evaluation of legal issues, the Commission must assess these costs but can decide whether to assess them to nonprofit educational licensees or to other licensees. The Commission believes that educational research provides an important benefit to the nuclear industry and the public at large and should not be discouraged. These nonprofit institutions have a limited ability to pass these costs on to others. Because the public comments do not provide a persuasive reason to change the proposed rule, the Commission will continue the exemption in § 170.11(a)(4) for nonprofit educational institutions and allocate these costs to operating power reactors.

2. Assessment of Fees for Standardized Reactor Design Reviews

Comment. Although the Commission did not propose changing its current policy of deferring payment of fees associated with standardized reactor design reviews, the Commission requested public comments on this issue. Numerous comments were received. The vendors who submit the designs for NRC review, NUMARC, and utilities endorsing NUMARC's comments, support the present policy of deferring the costs until the design is referenced in a license application or, if not referenced, the total accrued costs would be paid in full within a maximum of 15 years. They commented that, given the commercial industry's commitment to public health and safety and the benefits to be realized by the use of the standardized designs, it is reasonable to defer the costs and allocate them to power reactors. They suggest, however, that the deferred costs be paid in future dollars in order that "benefits received at some future time from a reduced annual charge on power reactors are equivalent to the 1991 amount paid." Second, a separate mechanism was suggested in order to repay those licensees who pay the increased annual fees now but may not benefit from a reduced annual fee at a later time because they are no longer subject to the annual fee. In addition, they suggest that those foreign companies seeking approval or certification of designs should be charged for the review costs as the costs are incurred by the Commission.

Other utilities and their representatives, on the other hand, objected to the current cost deferral policy as being neither fair nor equitable. These commenters indicated that such costs should not be recovered from power reactors, but from the vendors because these activities have no benefit to an already licensed plant. They argued that the Public Law does not grant the NRC the discretion to defer the costs. Therefore, since the costs are to be recovered these commenters stated that they should be charged as part 170 fees to the vendors seeking approval of the standardized designs. Others indicated that charging the costs to U.S. operating power reactors ignores the fact that the vendors will be marketing and selling the designs outside the U.S. They suggested that these other countries be solicited for a portion of the funding. Although the U.S. nuclear power industry or individual utilities may choose to support the new designs, commenters indicate that the costs for the standardized design review should be charged directly to the individual nuclear steam supply vendors. One utility commented that because, to its knowledge, no new plants have been ordered or planned, collecting these costs from currently operating power reactors is not appropriate. Another utility indicated that licensees should not become "lending institutions for other organizations who receive immediate benefit." Other commenters indicated that there are no assurances that current operating reactors forced to bear the costs will still be licensed 15 years hence to receive the benefit of reduced costs at that time or that the vendors themselves will be in business or available to pay the fees in the future.

Response. Based on the comments received, the fact that NRC is not altering fees to reduce the impact for other larger entities, and the fact that applicants for standardized reactor design reviews are large companies capable of paying for the services rendered by the NRC, the Commission is changing the current policy of deferring the costs for standardized reactor design reviews. The Commission has decided that the cost of these reviews, whether from domestic or foreign applicants, should be assessed under part 170 to those filing an application with the NRC for approval or certification of a standardized design. Budgeted costs for advanced reactor research, review of Electric Power Research Institute (EPRI) advanced reactor criteria, generic rulemaking and guidance (e.g., 10 CFR part 52 and Regulatory Guides) for standard plants and contested hearings will continue to be included in the operating power reactor annual fee.

Review costs incurred under the present deferral policy, up to the effective date of this final rule will continue to be deferred. Because the rule will not become effective until late FY 1991, costs budgeted during FY 1991 will be assessed to operating power reactors in order to recover approximately 100 percent of the FY 1991 budget authority. Parts 52 and 170 have been modified in the final rule to reflect this change in fee policy.

3. Assessment of Fees Based on Hourly Rate

Comment. Commenters, while having no problem with the method of calculation of the hourly rate, questioned the inclusion or exclusion of some cost elements in the overhead as part of the hourly rate. For example, commenters questioned the inclusion of Agreement State costs because the Agreement State program supports only materials licenses and the liaison activities with Agreement States provide no benefit to power reactors. Commenters indicated that ACRS costs relating to the review of advanced reactor designs, are also included in the overhead and should be assessed to vendors seeking review of an advanced design. Commenters stated that a unique hourly rate should be established for each class of licensee because not all overhead costs are applicable to each class of licensee. The commenters cite the ACRS cost as an example of cost included in the overhead that is not applicable to uranium producers and other non-reactor licensees. Utilities commented that it was unclear whether research grants to educational institutions and the Small Business Innovation Research Program (SBIR) should be included in overhead as opposed to charging these costs to operating reactors in the annual fee as in the proposed rule.

Response. The Commission has carefully considered the NRC costs classified as overhead and General and Administrative (G&A) and believes that the proposed allocations are appropriate from a practical point of view. Although any licensee may argue that there are isolated costs not applicable during a particular year, the Commission believes that when all costs are considered, the overhead and G&A cost allocation is appropriate and represents a practical and equitable way of allocating these costs to NRC licensees and applicants. With regard to the grants and SBIR programs, these programs are related to the NRC regulatory program with most of the activities being attributable to operating power reactors.

4. Assessing Fees to Agreement State Licensees Working in Non-Agreement States Under a Reciprocity General License

Comment. Many materials licensee commenters indicated that the annual fee for NRC materials licensees would result in an unfair advantage for their competitors who hold Agreement State licenses. The commenters pointed out that Agreement State licensees could operate in non-Agreement states without being assessed an annual fee by NRC. However, NRC licensees are charged a reciprocity fee by many Agreement States to operate in those states.

Response. Based on the comments received, the Commission has decided to assess fees to those Agreement State licensees working in States under NRC jurisdiction under the reciprocity provisions of § 150.20 for the services provided by the Commission. Specific services identified by the Commission which benefit the individual Agreement State licensees include review of their registrations required by the general license under Part 150 and inspection of the reciprocity activities. Accordingly, an application fee of $600 will be assessed for each application filed for review in addition to the inspection fee originally proposed. It is noted that some Agreement States charge similar fees. Section 170.31 has been revised to add fee Category 16 to cover the reciprocity application fee. The application fee will be due at the time the applicant files Form 241 with the Commission and payment shall accompany the application. The inspection fee, which will be based on the appropriate fee category for the activities authorized, will be due upon notification by the Commission.

5. Fees for Topical Report Reviews

Comment. Several comments were received opposing the elimination of the ceiling for topical report reviews. The commenters indicated that, while the action is consistent with Congressional guidance that applicants pay for the services provided, deleting the ceiling will introduce an element of uncertainty and thereby tend to impede utilities working together to initiate activities with plant safety benefits. Commenters indicated that applicants should be provided with assurances of predictable schedules and with an estimate of the cost upon submittal of the topical report because the cost of an activity is a key element in determining whether a project is worthwhile. The commenters also noted that removal of the cap presents budgeting problems which may (1) affect their ability to address future generic issues and (2) result in a return to plant specific resolution of issues.

Response. The Commission has decided to eliminate the ceiling for topical report reviews, as proposed, based on the 100 percent recovery principle and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC costs for topical report reviews vary significantly depending on the particular topical report reviewed and therefore make it impractical to establish an equitable ceiling or flat fee.

6. Fees for Export/Import Licenses

Comment. Two commenters strongly recommended that if export fees are to be charged, the NRC should establish a schedule of fixed fees for various types of materials and equipment exported from the United States. The commenters stressed that, in order to properly budget for the exports and to bill the customers in a timely fashion, a fixed fee would be more appropriate. The proposed fees were to be based on the actual staff hours expended on a particular application and billed after the issuance of the export licenses, which are mainly licenses of short duration (usually 6 months). Commenters pointed out that competitive bids have to be as precise as possible and a fee based on an estimate of staff hours to be expended leads to variation in the estimates and could result in loss of business in a highly competitive situation. One commenter indicated that the concern was not with the amount of the fees but their predictability and suggested that the NRC conservatively establish a fixed schedule of fees at a high enough level to ensure that all costs are recovered.

Response: The Commission agrees with the suggestion to establish a fixed fee schedule for export and import licenses and, after analyzing the available data, has determined that fair and equitable flat fees can be established. Therefore, the Commission has adopted a fixed schedule of export and import license fees based on the average costs for the review and approval of the various categories of export and import licenses. Fee categories K of § 170.21 and 15 of § 170.31 have been modified to include the revised application fees of $920 to $7,000 and amendment fees of $580 to $1,200 for export and import licenses.

7. Part 170 Flat Fees for Small Materials Licenses

Comment. One commenter was concerned about the Commission's use of flat fees in the materials licensing and inspection programs. The suggestion was made that the Commission establish a program for full and accurate accounting of actual manpower utilized to confirm that the fee basis is proper. The commenter suggests that if there is wide variance in the data for a given service, the NRC should consider abandoning the flat fee concept and going to full cost recovery based on actual manpower expended.

Response. The Commission has examined this method in the past and still believes that the administrative burden for such a system for its approximately 9,000 licenses and registrations would be significantly greater than under the current system and would not justify the potential improvement in fee fairness and accuracy. Therefore, this suggestion has not been adopted.

D. Specific Fee Issues—Part 171

Most of the comments received expressed concern regarding the magnitude of the annual fees. These commenters also stated that the fee did not represent the cost attributable to their license or class of licensees. Many of these statements were assertions without supporting justification. These assertions were not evaluated further. However, the Commission has reevaluated its method for determining annual fees for each class of licensee and the allocation of budget costs of these licensees. In general, the Commission concludes that the method and allocation developed for and used in the proposed rule are fair, equitable and practicable. However, some changes have been made in response to public comments. Responses to specific comments on Part 171 annual fees are as follows:

1. Annual Fees for Shutdown Plants

Comment. Two commenters indicated that charging them the full annual power reactor fee is neither fair nor equitable because certain costs allocated to all power reactors are inapplicable to them because the plants are shutdown and they have filed requests for a possession only license (POL). To attempt to levy the full annual fee upon them would violate Congress' clear instructions that fees evidence a reasonable relationship to regulatory services provided to the recipient licensees.

Response. The proposed rule excluded power reactors with a POL from the fee base. In this final rule, the Commission has also excluded from the FY 1991 fee base the two cases referenced in the comments, Shoreham and Rancho Seco, as well as Ft. St. Vrain. Orders were issued by the Commission to these plants in 1990. The orders, as written, effectively shut down the plants with the same effect as a POL. Three Mile Island 2 (TMI–2) will continue to be exempted from the Part 171 annual fees. TMI–2 was notified by letter dated May 12, 1989, that because the reactor was in a shutdown and defueled mode, the Commission was granting an exemption from the annual fee for FY 1989 and thereafter until the utility was issued a POL. This final rule grants these reactor licensees full exemptions from the FY 1991 Part 171 annual fees.

2. Partial Exemptions from the Annual Fee for the Small, Older Reactors

Comment. One commenter noted the Commission had, in the past, granted two partial exemptions from the annual fees for small, low power reactors. The low power units present a special problem, e.g., if the regulatory time and effort expended on small plants is less than the time and effort expended for large units, then a cost/megawatt ratio should be determined and all units charged accordingly. If the small units require essentially the same regulatory effort as the larger units, then other reactor customers and stockholders should not be expected to subsidize the operation of small units. On the other hand, the owners of the small reactors support the continuation of the exemption.

Response. Both Big Rock Point and Yankee Rowe have filed FY 1991 exemption requests as they have in the past. As in the past, the Commission, in this final rule, has granted Big Rock Point and Yankee Rowe a partial exemption from the annual fee. These partial exemptions are based on the exemption criteria as set forth in § 171.11. In addition, because of the older designs, many of NRC generic reactor activities are not applicable to these reactors. Thus, the NRC generic costs attributable to these reactors are less than those for other power reactors. Based on these considerations, the FY 1991 annual fee for Big Rock Point will be $225,100 and the FY 1991 annual fee for Yankee Rowe will be $507,900.

3. One Uniform Annual Fee for All Power Reactors

Comment. One commenter noted the differences in the proposed annual fees for operating power reactors compared to previous years and the fact that a specific reactor type in FY 1990 was the lowest charged of the four vendor groups and is now the highest in FY 1991. The commenter indicates that "the variability of the difference is greater than the attempted refinement." The commenter suggests that, because the differences are quite small compared to the proposed basic fee, the NRC dispense with the attempted refinement and charge one uniform amount for all part 50 power reactor licensees. This would have the benefit of improved predictability for ratemaking purposes.

Response. Although a uniform fee would be much simpler to calculate and would make the part 171 annual fee program much easier to administer, the Public Law indicates that the annual charge should be assessed "under the principle that licensees who require the greatest expenditures of agency resources should pay the greatest annual fee." Further, this concept formed the basis for prior reactor annual fees. For FY 1991, the Commission intends to continue this concept because it does not believe it is appropriate to change the concept without opportunity for public comment. The question of whether a uniform annual fee that is fair and equitable can be developed and assessed to all operating power reactors might be reconsidered in any future part 171 rulemaking.

4. Annual Fee for Fuel Facilities

Comment. One commenter questioned the allocation of $200,000 in budgeted safeguards costs to uranium hexafluoride converters (UF_6) as inappropriate. The commenter pointed out that the item relates to safeguards, licensing and monitoring pursuant to part 75 which relates to the control and accountability of special nuclear material. When the UF_6 leaves the plant, it is not enriched material. Therefore the safeguards costs should not apply. Another commenter noted that the regulation should be adjusted to provide that all part 70 high-enriched fuel fabrication license holders in the fuel facility class be assessed fees based upon their current status. One commenter believed that the two Combustion Engineering low-enriched facilities should be charged a single fee, as though they are one facility, because the two facilities represent one process. One commenter stated that the two UF_6 production facilities should have different fees because they require different amounts of safety attention. Another commenter indicated that it did not appear that the basis for allocating costs in the rule was followed and indicated that simply a uniform flat fee per facility constituted the most equitable method.

Response. The Commission has evaluated these comments and has made the following changes:

(1) Safeguards cost will not be assessed to UF_6 conversion facilities because, as the comments indicate, NRC safeguards regulations are not applicable to UF_6 conversion facilities.

(2) United Nuclear Corporation's Montville facility is included in the fee base as a high enriched uranium facility because the facility is currently operating and has an operating license similar to other high enriched uranium (HEU) fuel fabrication facilities that are being charged an annual fee.

(3) The same fee will be charged for each license in the same fuel facility categories (i.e., HEU, LEU, and UF_6) because it is not practical to allocate cost on the basis of such factors as difference in processes and whether or not the facility has more safety problems than another facility at a specific point in time.

In addition to the above changes, the Commission has adjusted the fuel facilities annual fees to account for the costs recovered from 9 small fuel facilities which are charged $100,000 per license. These adjustments will change the annual fees for HEU facilities from $2.3 million to $1.5 million; LEU facilities from $0.3–1.3 million to $0.7 million and UF_6 facilities from $0.7 million to $0.5 million.

5. Fees for Spent Fuel Storage

Comment. A commenter indicated that the NRC promoted the concept of part 72, subpart K licenses with the use of standard casks or facilities to reduce both utility and NRC costs. The commenter noted that the proposed annual fee could eliminate the economic feasibility associated with part 72 and seriously hurt development of on-site storage facilities. Other commenters indicated that because the Certificates of Compliance benefit the user (the part 72 general licensee) and not the certificate holder, the user should be assessed the annual fee. One commenter pointed out that a utility which seeks a part 72 license for an Independent Spent Fuel Storage Installation (ISFSI) and references an approved topical report for a storage system in its Safety Analysis Report (SAR) and application would be assessed an annual fee for its part 72 license, but the supplier of the storage system would not be assessed an annual fee for the topical report. One commenter stated that the annual fee would have the effect of discouraging efficiency and cost reduction that would benefit the NRC and the licensees generally, and could result in most of the current certificate holders dropping those certificates not currently in use or expected to be used within the next year.

One commenter noted that under the Nuclear Waste Policy Act (NWPA), utilities initiated construction of ISFSIs as interim facilities pending establishment of the Federally owned and operated waste repository. The commenters note that it is unreasonable to expect utilities to pay an annual fee for spent fuel storage since the Government (DOE) which accepts long-term responsibility for the spent fuel has not initiated the building of a storage facility but continues to require utilities to pay into the nuclear waste fund (NWF). The commenters recommended that for those utilities which are both paying into the NWF and paying the NRC spent fuel storage annual fee, DOE, rather than the utility, should be billed for the NRC annual fee.

Response. Based on these comments, the Commission believes that the proposed fee structure would result in unintended effects on the implementation of the recent amendments to 10 CFR part 72 adding subpart K (55 FR 29191; July 18, 1990). That is, instead of applying for a Certificate of Compliance, vendors would apply for a topical report approval in order to avoid the annual fee. This would result in shifting the fee to the specific ISFSI licensees. In addition, the Certificate of Compliance is similar to other approvals (e.g., approved topicals and approved standardized designs) where the users, not the holders of the approval, are assessed the annual fee. Therefore, the generic costs for independent spent fuel storage will be assessed in the annual fee for the licensees who have specific or general licenses to use the spent fuel storage casks. This would result in an increase in the annual fee for spent fuel storage licenses from $187,500 to $375,000 in FY 1991. The fee would be reduced in subsequent years since more facilities are expected to be licensed. The NRC is currently reviewing four specific license applications and one general license application for independent spent fuel storage. Fee Category 13 of § 171.16 has been modified to include annual fees for general licenses for storage of spent fuel under § 72.210 of part 72 of this chapter. With regard to charging the costs to DOE for payment from the NWF, the Commission has concluded that the costs are not covered by the NWPA and therefore are not recoverable from the NWF.

6. Low Level Waste (LLW) Surcharge

Comment. Many medical licensees commented that the $570 surcharge for LLW is inappropriate and should be removed from the rule for fee Category 7C. The licensees commenting on the proposed rule indicated that they hold the LLW for decay and it is disposed of either by incineration, release to regular trash, returned to the radiopharmacy or, in the case of generators, returned to the manufacturers. The licensees indicate that complete and comprehensive records are kept regarding the dates and methods of disposal.

Another commenter noted that while all three existing LLW disposal facility operators are licensed by Agreement States, they are also NRC licensees within the reach of NRC's authority under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990. At least two of the facility operators hold specific NRC licenses. All three hold NRC general licenses granted by 10 CFR 150.20, which are used in their interstate operations. The commenter also suggested that these facilities be charged more of the LLW costs.

Fuel facilities licensees indicated that the LLW surcharge should not be assessed equally to the facilities but assessed in proportion to the facility's licensed capacity or the amount of waste generated per facility. Uranium recovery licensees indicated that they do not generate LLW for disposal since their waste, primarily mill tailings, are disposed of on site. Thus they believe the LLW surcharge should not apply to them.

Response. The Commission agrees that (1) medical waste that is held for decay does not go to a licensed disposal site and should not be subject to the surcharge proposed in the rule and (2) uranium recovery licensees should not pay a LLW surcharge since their wastes are primarily disposed of on site. Therefore, fee Categories 2.A. (2) and 7C have been deleted from the categories assessed the surcharge for LLW in this final rule. These costs will be assessed to other material licensees that generate LLW for disposal, with a higher portion being allocated to licensees that dispose of special nuclear material waste. The Commission continues to believe that the $1.9 million of LLW costs allocated to fuel facilities is appropriate and the surcharge should be the same for all large fuel facility licensees. The resulting LLW surcharge will be increased from $570 in the proposed rule to $1,400 for most materials licensees that generate LLW for disposal. The surcharge to the SNM waste disposal and small fuel facilities licensees will be $35,800. The large fuel facilities will pay a surcharge of $143,400.

7. Annual Fee for Depleted Uranium

Comment. A few commenters questioned the assessment of annual fees for depleted uranium used as shielding in sealed sources and devices. They pointed out that the depleted uranium is a line item on a broad scope license, requires no administrative costs on an ongoing basis and therefore, should be considered as part of the annual fee for a broad scope license.

Response. The Commission agrees. The shielding is often included in medical, radiography, and nuclear pharmacy licenses as part of the standard license authorization requiring little or no additional generic regulatory effort. Thus, it is not appropriate to assess a separate annual fee for the depleted uranium in these instances. However, for those specific licenses which only authorize depleted uranium as shielding, e.g., shielding for a linear accelerator, an annual fee will be assessed. The appropriate fee categories in § 171.16 have been revised in the final rule to reflect this change.

8. Annual Fees for Transportation Certificate of Compliance Holders and Licensees

Comment. One commenter recommended that the NRC costs attributable to transportation licensees be distributed to all NRC licensees who are receiving the benefits from NRC services. To this end, the commenter recommended that both the Certificate of Compliance holders and all users of the transportation casks pay the annual fee. The suggested annual fee was $1,000 for the certificate holders and $500 for the users. Another alternative suggested by the commenters was to charge an annual fee to only registered users of transportation casks and not charge the certificate holder. The commenters noted that Canada charges the users and the costs can be readily absorbed by the utilities who are the principal transporters.

Response. The Commission has carefully considered these comments and will assess the users an annual fee for their quality assurance (QA) plan approvals. An annual fee will not be assessed to Certificate of Compliance holders. This is consistent with the approach taken for other holders of "standardized" approvals, e.g., topical reports, standardized reactor designs, and Certificates of Compliance for spent fuel storage. The annual fee for users will be $1,700 per approved QA plan for use only and $29,000 per approved QA plan for use and fabrication. To recover the NRC costs attributable to all of DOE's transportation casks, an annual fee of $1.2 million will be assessed to DOE.

9. Annual Fees for Uranium Recovery Facilities

Comment. Some commenters recommended that the NRC exempt from fees ion-exchange plants and mills that are on a standby basis, in limited production, or have their reclamation plans under review by the NRC. One commenter suggested that the NRC costs attributable to uranium recovery facilities be assessed to foreign sources that deliver uranium to domestic energy plants and another commenter suggested that those costs be allocated to operating power reactors. Another commenter stated that there are many licensees that have no intention of operating again but, through no fault of their own, have not had their reclamation plans approved. They noted that delays in approval of these plans are not the fault of the licensee, but, for the most part, are attributable to the NRC. The commenter believed these uranium recovery licensees should not pay the annual fee, and suggested that the annual fee be waived as soon as it became clear that a licensee would no longer operate its facilities and had filed a request for final reclamation plan approval. They also stated that it was inequitable and counter-productive to charge an annual fee to non-operating licensees that intend to commence reclamation. Another commenter noted that it had an approved decommissioning/reclamation plan and is in the final stages of reclamation and should not pay an annual fee since the NRC research and special projects provide no benefit to the licensee.

Response. The Commission will recover the NRC costs attributable to uranium recovery from mills and ion-exchange plants in operation, or standby, or with reclamation plans under review. The Commission believes this is a practical, equitable, and fair way to recover the NRC costs, given the limited number of operating mills and is consistent with the approach taken for other classes of licensees. However, the Commission will not assess annual fees to mills that are undergoing decommissioning and reclamation because they are similar to reactors with a POL. The Commission has reviewed all uranium recovery facilities against these criteria. On the basis of the review, the Commission determined that there are 20 uranium facilities that should be assessed an annual fee. This compares to 30 in the proposed rule. This reduction in the number of facilities causes an increase in the annual fee from $51,000–77,000 and $67,000–$100,000, depending on the type of license.

10. Review of DOE Activities

Comment. A few commenters questioned why the Department of Energy (DOE) was not being charged an annual fee with respect to the general licenses referred to in 10 CFR 40.27 and 40.28.

Response. 10 CFR 40.27 and 40.28 are general licenses issued in the NRC regulations that fulfill a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Pub. L. 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general licenses in the regulation cover only post-reclamation closure custody and site surveillance. All substantive NRC review, both site specific and generic, is essentially completed prior to the application for the general license. Because none of the inactive sites have entered the post-closure stage, DOE is not yet an NRC licensee and therefore cannot be billed under part 171. When post-closure is achieved and these sites are licensed to the Government, the Commission will reconsider the assessment of NRC costs associated with the UMTRCA.

E. Other Comments

Some commenters contended that because the NRC would be required to collect 100 percent of its budget authority and licensees would be paying for the entire budget, a mechanism should be created, either through the establishment of a separate office or an advisory committee, to (1) assess the cost-effectiveness of proposed generic programs and to eliminate potential duplication of industry sponsored programs; (2) review agency cost trends and accounting practices; and (3) develop and propose future revisions to the fee regulations. The office or committee should include industry representatives and would have the right of public review and audit.

Commenters are concerned that the NRC, in collecting 100 percent of its budget, has been freed from meaningful accountability and lacks mechanisms to adequately monitor its own expenditures. Commenters indicated that more information must be made available to the public in order for licensees to understand the basis for the budget and its allocation for fee purposes. They pointed out that the public has no access to or understanding of the mechanisms used by NRC for tracking expenditures or for allocation of the charges to specific licensees or classes of licensees. They suggested that a process be established for public review of allocations for part 170 fees and the annual charges under part 171 and for refunding or crediting fees that are improperly allocated. Another commenter indicated that the relationship between the NRC and the licensee becomes one of NRC being a service organization with the licensee as the customer with little control over services rendered. This, they said, was not consistent with the charter of a regulatory agency.

Response. The requirement for NRC to recover 100 percent of its budget through fees does not exempt the NRC from the normal Government budget review and decisionmaking process. The NRC must first submit its budget to the Office of Management and Budget. The NRC budget is then sent to the Congress for review and approval. The budget process, along with the internal NRC review process, helps ensure that the NRC budget is the minimum necessary to carry out an effective regulatory program. As in the past, the NRC will continue to base its fees on budget authority and provide the public with detailed supporting information concerning the bases for its fees. This information will continue to be available at the activity level, the lowest level for budgeting purposes. However, the Government is not subject to audit by outside parties. Audits are performed by the General Accounting Office or the agency's Inspector General, as appropriate. Therefore, these suggestions have not been adopted.

IV. Final Action—Changes Included In the Final Rule

The actions taken by the Commission in the final rule are as follows and permit the NRC to recover approximately 100 percent of its budget authority for FY 1991. Most of these changes were set forth in the proposed rule published on April 12, 1991 (56 FR 14870). Differences between the final rule and the proposed rule were explained in section III, Responses to Comments, and are noted in the following discussion.

Public Law 101-508 requires that the NRC recover 100 percent of its budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF for FYs 1991 through 1995 by assessing license and annual fees. The fees for FY 1991 must be collected by September 30, 1991.

The Commission has followed the guidelines in section II, as established by the Congress, in determining the fees to be assessed to comply with the Public Law. The following description explains the approach taken by the Commission to determine the amounts of the part 170 licensing and inspection fees and the part 171 annual fees to be assessed. Because the NRC must now recover 100 percent of its budget authority rather than 33 or 45 percent as in the past, the approach for updating the fee schedules necessarily varies from the approach taken in the past. The approach taken must ensure that all budgeted costs are now covered by fees. To ensure that all budgeted costs are covered, the NRC has taken the following actions.

A. Appropriations from the Nuclear Waste Fund

During FY 1990, the Congress made provisions that the amounts budgeted for high-level waste (HLW) costs were to be directly appropriated to the NRC from the NWF. Appropriations received by the NRC from the NWF are not to be recovered by the annual charges. For FY 1991, $19.7 million has been appropriated from the NWF and has been excluded from the budget authority of $465 million. Therefore, NRC must collect approximately $445.3 million in FY 1991 through part 170 licensing and inspection fees and part 171 annual fees.

B. Amendments to 10 CFR Part 170: Fees for Facilities and Materials Licenses and Other Regulatory Services; 10 CFR Part 71: Packaging and Transportation of Radioactive Material; and 10 CFR Part 52: Early Site Permits; Standard Design Certification and Combined Licenses for Nuclear Power Reactors

Seven amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Report that fees assessed under IOAA recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, NRC is amending 10 CFR parts 52 and 170 to assess licensing fees for the review of standardized reactor designs. This change is being made based on evaluation of the public comments received on the proposed rule (see section III to this final rule).

Second, NRC is amending the agency-wide professional hourly rate, which is used to determine the part 170 fees, to include all NRC budgeted overhead and general and administrative (G&A) costs. The hourly rate is increased by adding the overhead and G&A budgeted costs for the following organizations: Commissioners, Secretary, General Counsel, Government and Public Affairs (except for international safety and safeguards programs), Inspector General, Enforcement, Investigations, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committee on Nuclear Waste, Advisory Committee on Reactor Safeguards, Atomic Safety and Licensing Appeal Panel, and Atomic Safety and Licensing Board Panel. Most of these overhead and G&A organizations were previously excluded by the Commission from fee recovery (42 FR 22149; May 2, 1977). They have now been included because the Commission must recover 100 percent of its budget authority. As a result of including the additional organizations, the professional hourly rate in § 170.20 is increased by 25 percent (from $92 to $115 per professional staff hour). The NRC has increased the current part 170 licensing and inspection fees for all applicants and licensees to reflect this increased hourly rate.

Third, the NRC is amending 10 CFR parts 71 and 170 to recover costs expended by the NRC in conducting inspections related to casks, packages, shipping containers, and part 71 vendor QA programs and inspections conducted of manufacturers and initial distributors of sealed sources and devices. The NRC has completed Phase One of the transportation package-supplier inspection program. During this pilot program, six package-supplier (vendor) inspections were conducted. The inspections focused on implementation of procedures and approved QA programs. Inspection fees were not assessed for the six inspections conducted in Phase One because these inspections were pilot inspections designed to determine the need for safety inspections in the package-supplier industry. On the basis of the results of Phase One, the NRC plans to continue the program. Therefore, consistent with NRC policy of charging for health and safety inspections, this final rule would recover the full cost of routine and nonroutine inspections through fees. Routine inspections are estimated to range in cost from $6,000 to $22,000. Fees associated with the review of casks, packages, shipping containers, and vendor QA programs are currently assessed under § 170.31, fee categories 10A and 10B. A similar pilot program has been conducted for inspections of manufacturers and initial distributors of sealed sources or devices containing a sealed source. The NRC plans to continue this program as well.

Therefore, the final rule would recover the costs of conducting routine and nonroutine inspections through fees. Fees associated with the review of sealed sources and devices are currently assessed under § 170.31, fee categories 9A through 9D. Note that similar inspection fees were established by the NRC, effective August 17, 1990, for activities relating to Certificates of Compliance for spent fuel storage casks and for inspections related to the storage of spent fuel (55 FR 29181; July 18, 1990).

Fourth, the NRC is charging both (1) licensing fees for review of the registrations (Form 241) filed with the NRC by Agreement State licensees who seek permission to perform work in non-Agreement states under the reciprocity provisions of 10 CFR 150.20 and (2) inspection fees for those inspections conducted by the NRC of Agreement State licensees. Under 10 CFR 150.20, any person holding a specific license from an Agreement State authorizing use at temporary job sites is granted a general license to conduct the same activity in non-Agreement States for a period not to exceed 180 days per calendar year. The NRC reviews Form 241 filed with the NRC to conduct activities in non-Agreement States and conducts periodic inspections of activities performed under the reciprocity provisions. The NRC has established an application fee of $600 for the registration review and will assess the inspection fees shown in the specific categories of 10 CFR 170.31 to those Agreement State licensees that are inspected by the Commission. For example, an Agreement State licensee performing radiography work in a non-Agreement State and inspected by the Commission would pay the applicable routine inspection fee of $1,200 in fee Category 3.0. Similar fees are assessed by some Agreement States to NRC licensees who perform work in Agreement States under the reciprocity provisions.

Fifth, the NRC is amending § 170.2, Scope, to broaden and to clarify the Commission's intent to more fully collect fees for identifiable services. For example, fees based on the full-cost recovery method will be assessed for preapplication license reviews for potential construction permit and operating license (CP/OL) applicants for reactors, fuel facilities low-level waste (LLW) disposal, and standardized reactor designs, even though an application may never be filed.

Sixth, the NRC is eliminating the ceiling of $50,000 on part 170 fees for reactor and material topical report reviews and amendments to topical reports and full costs will be recovered for these services. In the past, the Commission had decided to retain a ceiling on fees for the review of topical reports to encourage submission of these reports (55 FR 21173; May 23, 1990). However, the Commission may legally charge the full cost of processing an application for which the applicant receives a special benefit not available to the public at large. *Mississippi Power and Light Co.* v. *NRC*, 601 F.2d 223, 230 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980); see also *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370, 376 (10th Cir. 1986) (upholding full cost fees, under IOAA, by FERC on licensees despite benefits to the general public). Therefore, following Congressional guidance that each licensee or applicant pay the full costs to NRC of all identifiable regulatory services received, the Commission has removed the $50,000 ceiling.

Seventh, the NRC has changed its policy for exempting certain classes of licensees from fees by revoking the exemption provisions in § 170.11(a) (1), (2), (8), (9) and (11). Specifically, the Commission has established license fees for export and import license applications previously exempted from fees under § 170.11(a) (1) and (2). Fees are established in part 170 for the export or import licensing of a production or utilization facility, and for export or import licensing of byproduct material, source material, or special nuclear material, including heavy water, tritium and reactor grade graphite. Based on the public comments received (see section III of this final rule), the Commission has established flat fees for both export and import licenses. This is a change from the proposed rule, where the fees were to be based on recovering the professional staff hours and contractual services costs expended for the review. The flat export and import license fees would range from $580 to $7,000, depending on the type of material or equipment being exported or imported and the type of action (new license or amendment). Any review of a route approval required in conjunction with an import license will also be assessed fees under part 170.

Additionally, holders of licenses specifically authorizing depleted uranium as shielding only in devices and containers who were previously exempt from fees under § 170.11(a)(8) will be subject to the fees under fee category 2B of § 170.31 and § 171.16. Based on the comments received, the NRC will not assess an annual fee for the depleted uranium when it is part of a license authorizing other activities (e.g., medical or radiography license). The NRC will also assess fees to State and local governments and Indian Tribes and Indian organizations. These licensees were previously exempted from fees under § 170.11(a) (9) and (11). Under the final rule, these licensees will pay the licensing and inspection fees established in part 170 for the fee category(ies) applicable to the license. For example, a State agency that is authorized to possess and use a soil-density gauge containing radioactive material will pay the applicable fees for fee category 3P. These licensees plus Government agencies with NRC licenses or certificates will also become subject to the new annual fees established in part 171 for nonpower reactor licensees and materials licensees. The Commission will maintain the current exemption from fees in § 170.11(a)(4) for nonprofit educational institutions and has added a similar provision in § 171.11.

The NRC estimates that approximately $79.5 million will be recovered in FY 1991 from the fees assessed under 10 CFR part 170. The final amendments, including the revised hourly rate, will have minimal effect on FY 1991 collections because the final rule will not become effective until the last month or so of the fiscal year. The amount recovered is expected to increase by approximately 25 percent in FY 1992.

C. Amendments to 10 CFR part 171: Annual Fees for Power Reactor Operating Licenses

The NRC has amended this regulation, which currently establishes annual fees for operating power reactors only, to increase the annual fees for operating power reactors, and to add annual fees for nonpower (test and research) reactors, materials licensees including fuel fabrication facilities, uranium recovery facilities, transportation and cask users, other small materials licensees, and Government agencies who are licensed by the NRC. All annual fees in part 171 are based on the increased hourly rate.

1. Costs Attributable to Power Reactors

The NRC has made two changes to the operating power reactor annual fee currently being assessed.

First, part 171 has been expanded to include additional regulatory costs that are attributable to power reactors other than those costs that have previously been included in the annual fee for operating power reactors. These additional costs include the costs of generic activities that provide a potential future benefit to utilities currently operating power reactors. These generic activities are associated with reactor decommissioning, license renewal, standardization, and construction permit (CP) and operating license (OL) reviews. Also included are NRC generic costs that are primarily related to power reactor licensees, but that support other NRC applicants and licensees (e.g., costs to update 10 CFR part 20 of the Commission's regulations and to operate the Incident Response Center) because the NRC would incur these costs in about the same amount to regulate power reactors even if they did not support other applicants and licensees.

Second, the NRC has included in the annual fee for operating power reactors those activities related to specific power reactors that are not billed under part 170 (e.g., NRC staff participation in contested hearings, responses to Congressional inquiries regarding specific reactors, orders issued pursuant to 10 CFR 2.204 and amendments resulting specifically from these orders, responses to 10 CFR 2.206 petitions, and responses to reactor allegations). Because the Commission is adhering to its previous policy decisions that these types of activities not be included in part 170 (42 FR 22159; May 2, 1977 and 49 FR 21297, 21300; May 21, 1984), the costs of these activities are recovered through the annual charge under part 171.

In part 171, the Commission has continued to identify and has determined power reactor annual fees that are based on the type of reactor (PWR, BWR), the reactor vendor (e.g., General Electric, Westinghouse), and the location of the reactor (seismic review costs may vary from region to region). The Commission will continue to consider requests for exemption from the full reactor annual fee for the smaller, older power reactors (e.g., Big Rock Point, and Yankee Rowe). Both Big Rock Point and Yankee Rowe have filed FY 1991 exemption requests in accordance with the criteria in § 171.11. The Commission has granted partial exemptions from the annual fees to both reactors for FY 1991. The reactors have been removed from the fee base in determining the calculation of the annual fees for the other operating power reactors. However, the Commission reemphasizes its intent to grant exemptions sparingly (51 FR 33227; September 18, 1986). Therefore, the Commission strongly discourages licensees from filing exemption requests. As the Commission has indicated previously, if a power reactor licensee has only the authority to possess nuclear material and the Commission has received a request from the licensee to amend its license to permanently withdraw its authority to operate the reactor or the Commission has permanently revoked such authority, the licensee is not subject to the annual fee under this part for that power reactor (51 FR 33228; September 18, 1986). Consistent with this policy, the Commission has granted an exemption from the FY 1991 annual fees for Ft. St. Vrain, Rancho Seco, Shoreham and TMI-2 because of the orders that were issued by the Commission to these plants in 1990. The orders, as written, effectively shut down these plants with the same effect as a possession only license.

Considering the above modifications, budgeted costs of approximately $290.9 million have been identified as being attributable to the operating power reactor class of licensees. Thus, by modifying part 171, the base annual fee for an operating power reactor is increased from approximately $1 million to approximately $2.7 million.

2. Costs Attributable to Other than Power Reactors

Pursuant to Public Law 101-508, the NRC has amended part 171 to establish and assess annual fees for costs applicable to nonpower reactors, and materials licensees. Materials licensees include fuel fabrication facilities, spent fuel storage casks and facilities, uranium recovery facilities, and those who hold transportation Certificates of Compliance, approvals of QA programs, sealed source and device registrations, and other small materials licensees. Government agencies licensed by the NRC will also be charged an annual fee based on the type of license or certificate they possess. Consistent with the guidance in the Conference Report, annual fees will be assessed for NRC generic regulatory costs and other costs not recovered under part 170 but attributable to these licensees and holders of certificates, registrations and approvals. The NRC costs are associated with generic activities (e.g., rulemaking, upgrading safeguards requirements, modifying the Standard Review Plans, overseeing regional programs, and developing inspection programs) and other activities not billed under part 170 (e.g., event and allegation followup, contested hearings and responses to § 2.206 petitions) that are required to regulate these licensees and certificate holders. The following discussion explains the assessment of the annual fees for nonpower reactors and the various classes of fuel cycle and materials licensees.

Nonpower Reactors. All test and research reactors, except those operated by nonprofit educational institutions, are included in this class. This would include those reactors operated by the Federal government. Budgeted costs of approximately $500,000 have been identified as being attributable to licensees who are not nonprofit educational and are licensed to operate test and research reactors. An annual fee of $50,000 will be assessed for each test and research reactor.

Major Fuel Facilities. The licensees in this class are predominantly persons with licenses authorizing them to possess and use significant quantities of special nuclear material in fuel processing and fabrication or significant quantities of source material in the conversion of uranium hexafluoride (UF_6). Twenty facilities have been identified and included in this class of licensees: six manufacturers of low-enriched fuel, three manufacturers of high-enriched fuel, two who operate UF_6 conversion facilities and nine other facilities that possess and use special nuclear materials. The NRC budgeted costs attributable to these fuel facilities are approximately $10.6 million. The Commission has established and will assess an annual charge to these major fuel facilities to recover NRC generic budgeted costs that are attributable to these facilities. The annual fee per facility license would range between $540,000 and $1.5 million depending on the type of license (e.g., high enriched uranium, low enriched uranium, and UF_6 conversion). The other small facilities will be assessed an annual fee of $100,000 per license.

Storage of Spent Fuel. The licensees in this class are holders of licenses, including a general license, to receive and store spent fuel at an ISFSI. The NRC costs attributable to these licensees are $1.5 million. The annual fee is $375,000 per license. The NRC will not assess an annual fee for spent fuel storage Certificates of Compliance.

Uranium Recovery Operations. Licensees that are subject to annual fees in this class includes mills, in-situ leaching facilities, heap leaching facilities, ore buying stations, ion-exchange facilities, and metal extraction facilities. The NRC budgeted generic costs for these types of licensees are $1.9 million, resulting in an annual fee for these facilities ranging from $67,000 to $100,000, depending on the type of license (e.g., mills, in-situ leaching, and heap leaching). The NRC will not assess an annual fee to uranium mills with approved reclamation plans or the low level waste surcharge to uranium recovery facilities since their waste is disposed of on site.

Transportation of Radioactive Material. Holders of approvals for QA programs and the Department of Energy are included in this class and are subject to an annual fee. The NRC budgeted costs attributable to transportation of radioactive material are $4.8 million. $1.2 million will be assessed to the Department of Energy for NRC activities associated with all of their transportation casks. The remaining costs are allocated to holders of QA plan approvals. The annual fee for approved QA plans is $29,000 for users and fabricators and $1,700 for users only. The NRC will not assess an annual fee for transportation cask Certificate of Compliance holders.

Materials Licensees. Licensees in this class would include but not be limited to doctors, hospitals, radiographers, well loggers, gauge users, sealed source and device registrants, and nuclear laundries, all of which are currently assessed fees under part 170. In order to recover the $27.2 million in budgeted NRC costs attributable to this class of licensees, annual fees have been established for materials licensees. The annual fees for most of these licensees are expected to range from $290 to $10,700, depending on the type of license held. The annual fee for a military "master" broad-scope license is $200,000. The NRC will not assess the low level waste (LLW) surcharge to nuclear medical licensees, other than broad medical licensees, because most of their waste is held for decay and does not require disposal at licensed LLW disposal sites. Materials licensees may pay reduced annual fees if they (1) qualify as a small entity under the Commission's size standards (50 FR 50241; December 9, 1985) and (2) file a completed NRC Form 526 with the Commission certifying that they are a small entity. The Commission estimates that the reduced fee for small entities will result in $22.3 million of the $27.2 million being assessed as part of the base annual fee for material licensees.

Government agencies that hold an NRC license or certificate are subject to the annual fees. With respect to Government agencies that have NRC licenses, the Commission has followed the mandate of the IOAA that specifically indicates that fees should not be assessed to Federal agencies for identifiable services rendered. Public Law 101–508, which now requires that the NRC recover 100 percent of its budget authority, is silent with respect to recovery through annual fees of NRC costs that are attributable to other Government agencies. Because Public Law 101–508 does not contain a restriction on charging government agencies analogous to the IOAA, the NRC will recover its costs, under part 171, for those Government agencies that hold NRC licenses or certificates.

Under this final rule, Government agencies with NRC licenses will pay annual fees, but not licensing and inspection fees under part 170, that are the same as those paid by other NRC licensees. For example, Veterans Administration (VA) hospitals, Army irradiators, and National Aeronautics and Space Administration (NASA) radiographers will be assessed an annual fee that is based on the fee category assigned the license. For instance, NASA would pay the annual fee assigned to fee Category 3.0. for a license authorizing radiography. In addition, a new annual fee category 17 has been established for those military "master" broad licenses that authorize multiple activities at multiple locations under the same license and a new annual fee category 18 has been established for Department of Energy Certificates of Compliance for transportation casks.

With respect to exemptions for materials licenses, the Commission plans to establish a very high threshold for eligibility for any requested exemption to the annual fees. The NRC will rarely grant an exemption because of the requirement by Congress that the NRC recover 100 percent of its budget authority through fees. Therefore, the NRC strongly discourages licensees from filing exemption requests. The Commission notes that the impact of the final rule on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A to this document). Based on this analysis, the Commission has reduced the annual fees for small entities.

Those materials licensees that hold a possession only license and who have permanently ceased operations will not be subject to the annual fees under this part for that materials license. Those licensees, who by the effective date of this rule, wish to relinquish their license(s) and who are capable of permanently ceasing licensed activities entirely by September 30, 1991, will not be required to pay the annual fee if within the 30 day period they so notify the Commission in writing according to the Commission's regulations in 10 CFR 30.36, 40.42, 50.82, and 70.38 and can promptly (before September 30, 1991) comply to the Commission's satisfaction with the conditions for license termination in those regulations. This will also apply to holders of Certificates of Compliance, quality assurance program approvals and holders of sealed source and device registrations who wish to relinquish their certificates, approvals or registrations before September 30, 1991, to avoid payment of the annual fee and who so notify the Commission in writing by the effective date of this final rule and comply, to the Commission's satisfaction, with all applicable regulatory requirements.

These amendments to part 171 do not change the underlying basis for part 171; 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 Report, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692–93.

3. Costs Remaining to be Recovered After Amendments Identified in Items 1 and 2 of this Section IV

After making the necessary amendments to 10 CFR parts 170 and 171, shown in items 1 and 2, approximately $28.4 million remains to be collected in order to meet the 100 percent recovery requirements of the Public Law (See Table I).

TABLE I.—RECOVERY OF NRC'S FY 1991 BUDGET AUTHORITY

Proposed recovery method	Estimated amount ($ in millions)
Nuclear Waste Fund	$19.7
Part 170 (license and inspection fees)	[1]79.5
Part 171 (annual fees)	
Power Reactors	290.9
Nonpower Reactors	.5
Fuel Facilities	10.6
Spent Fuel Storage	1.5
Uranium Recovery	1.9
Transportation	4.8
Material Users	22.3
Subtotal	332.5
Costs remaining to be recovered not identified in items 1 and 2 above	33.3
Total	465.0

[1] Amount of recovery is expected to increase by approximately 25% in FY 1992 after the final rule becomes effective. The amendments including the hourly rate will have minimal effect on FY 1991 collections because the final rule will not be effective until the last month or so of the fiscal year.

The budgeted costs of $33.3 million that remain to be recovered are for the following activities:

(a)Activities not attributable to an existing NRC licensee or class of licensees:

—Reviews for Government agencies including the Department of Energy (DOE) activities that do not result in issuance of a license or certificate;
—The Office of Governmental and Public Affairs (GPA) international cooperative safety program and GPA's and the Office of Nuclear Material Safety and Safeguards' (NMSS) international safeguards activities;
—LLW disposal generic activities; and
—Uranium enrichment generic activities.

(b) Activities not assessed 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees on the basis of existing Commission policy:

—Licensing, inspections, and other NRC activities for nonprofit educational institutions;
—Reduction in annual fees for small entities;
—Licensing reviews for export/import (FY 1991 only); and
—Licensing reviews of standard reactor design applications (FY 1991 only).

These activities have been examined and evaluated by the Commission to determine how their costs should be recovered, through annual fees, considering—

—The beneficiary of the NRC activities;
—The NRC licensee's ability to pay the fees; and
—The NRC administrative burden associated with determining and collecting the fees and the discretion afforded NRC by the courts and conferees not to assess the annual fees on all licensees.

To recover the budgeted costs of $28.4 million for these activities, the Commission considered the following options:

(1) Allocating costs to operating power reactor licensees only.

(2) Allocating costs to all NRC licensees currently subject to the fee regulations (i.e., reactor, fuel cycle facility, and materials licensees).

(3) Allocating costs to each individual licensee, classes of NRC licensees or persons that receive the NRC services, where legally feasible. (This option would have also required selection of Option 1 or 2 above to achieve 100 percent recovery.)

The Commission considered only those alternatives that would ensure that all NRC activities are covered by fees so that approximately 100 percent of the budget is recovered.

Alternatives that led to less than 100 percent collection of the budget in FY 1991 were not considered because, as Congress recognized, certain budgeted costs are not associated with an NRC licensee or class of licensees. Nonetheless, Congress required these costs to be collected.

Activities not attributable to an existing NRC licensee or class of licensees. This first major category of costs covers those NRC activities that are not attributable to an existing NRC licensee or to a class of licensees. This category includes the reviews of certain DOE activities and actions; GPA international cooperative safety program; NMSS and GPA international safeguards activities; the Office of Nuclear Regulatory Research's (RES) and NMSS generic low-level waste activities; and NMSS and RES generic uranium enrichment activities.

With regard to DOE, the Office of Nuclear Reactor Regulation (NRR) reviews DOD/DOE reactor projects and NMSS performs safety and environmental reviews of DOE activities and actions under the West Valley Demonstration Project Act and Uranium Mill Tailings Radiation Control Act (UMTRCA). DOE has not been issued licenses for these reviews. These reviews result in approximately $3.7 million in NRC budgeted costs. Because over 95 percent of these costs are for NRC regulation of DOE West Valley and UMTRCA activities, both of which indirectly benefited operating power reactors, the NRC has included these costs in the annual charge for operating power reactors (Option 1). When post-closure is achieved for UMTRCA sites and the sites are under a NRC general license in accordance with 10 CFR 40.27 and 40.28, the NRC will reconsider the assessment of UMTRCA costs.

The GPA international cooperative safety program and the NMSS and GPA generic international safeguards program, which includes implementation of the United States/International Atomic Energy Agency (US/IAEA) Safeguards Agreement, result in budgeted costs of approximately $4.9 million. These activities are not directly associated with any NRC licensee or any one class of licensees. However, approximately 70 percent of these costs are associated with GPA's international cooperative safety program that has a major component devoted to activities associated with reactors. U.S. power reactors receive an indirect benefit from this component. For example, the NRC, as part of its cooperative exchange program, receives extensive reactor incident information and valuable research results from foreign countries which are used to assist in improving the safe operation of U.S. power reactors. The other 30 percent of the costs are for activities associated with international safeguards, which primarily support nuclear nonproliferation. However, these activities do provide a minor benefit to power reactors (e.g., IAEA inspects reactors). Because a substantial portion of the total NRC costs for international activities benefits reactors, the NRC has included the costs in the annual charge for operating power reactors (Option 1).

The generic budgeted costs relating to RES and NMSS LLW disposal activities amount to approximately $9.8 million. The existing three LLW disposal facilities are licensed by Agreement States, and two of these facilities also have NRC licenses for disposal of special nuclear material. It is not reasonable to allocate the entire LLW generic regulatory costs to these two licensees. However, approximately 60 percent of LLW is generated by power reactors, 20 percent by fuel facilities, and 20 percent by materials licensees. Because these NRC licensees will indirectly receive the benefits from these NRC LLW expenditures, the NRC has determined that these licensees pay the costs of these activities (Option 2). The distribution of the costs would be based on the estimated amount of waste generated. Therefore, the Commission has assessed approximately 60 percent of the LLW generic costs ($6 million) to operating power reactors, approximately 20 percent to fuel cycle facilities ($1.9 million) and approximately 20 percent to materials licenses ($1.9 million). Once the NRC issues a license to dispose of byproduct LLW, the Commission will reconsider the assessment of generic costs attributable to LLW disposal activities.

NMSS and RES are establishing the regulatory framework to regulate uranium enrichment facilities. The budgeted costs for these activities are approximately $1.1 million. Although an application has been submitted to construct a uranium enrichment facility, no uranium enrichment licensee now exists upon which to assess an annual charge for these generic costs. Because uranium enrichment provides indirect benefits to operating power reactors, Option 1 was selected (i.e., recover the cost through annual charges to operating power reactors). Once the NRC issues a uranium enrichment facility license, the Commission will reconsider the assessment of generic costs attributable to uranium enrichment facilities.

Activities and budgeted costs not currently assessed 10 CFR part 170 licensing and inspection fees based on Commission policy. The second major category of costs covers those activities for which a specific identifiable applicant or licensee receives NRC services and for which fees could be assessed under part 170. However, fees are not currently assessed for these activities as a result of an existing Commission fee exemption policy decision.

Activities included in the category are license reviews and inspections for nonprofit educational institutions (i.e., license reviews and inspections of certain nonpower reactors and materials users). These expenses, approximately $2.2 million, are exempted from part 170 licensing and inspection fees (§ 170.11(a)(4)). This exemption is based on the Commission's long-standing policy of exempting educational institutions that use materials for the teaching and training of students or research (33 FR 10923; August 1, 1968). Note, however, that the costs of any commercial activities that are authorized by the licenses are recovered through fees under part 170. For example, fees are charged for licenses that authorize use of strontium-90 eye applicators in the treatment of eye disease and xenon-133 for blood flow pulmonary functions; distribution of *in vitro* kits and radiopharmaceuticals; services the licensee provides to other persons or licensees for a charge, such as soil density measurements and installation, calibration, and leak testing of equipment containing radioactive material, and use of licensed material for consulting services. Because many of these entities have limited ability to pass regulatory costs to their clients, assessing fees could affect the ability of these organizations to continue to perform the licensed services. In addition, these organizations provide broad national support and benefits to the education and health care fields.

The Commission after review of the public comments has decided to continue the current exemption from fees as established in § 170.11(a)(4). Because the NRC licensing and inspection activities associated with these licensees do not provide benefits to any other NRC class of licensees, the criteria of who can equitably and practicably afford to pay in this case lead to selecting Option 1 (i.e., allocate the costs to operating power reactors).

The other activity for which a specific recipient of an NRC service can be identified is the review of specific applications for standard reactor designs and early site permits. Consistent with NRC policy to promote standardization, existing NRC regulations defer, for up to 15 years, NRC costs for reviewing standard reactor designs. This is equivalent to the deferral of approximately $5.4 million in FY 1991.

Based on the comments received and the Commission's reevaluation of this issue, the Commission has decided to change the deferral policy and assess the review costs to the vendors under part 170 as the work progresses on the standardized designs. Since part 170 has been amended to reflect this change as of the effective date of this final rule, the full effect of the revised regulation will not take place until FY 1992 and subsequent years. Therefore, for FY 1991 only, the Commission will recover the costs from operating power reactors (Option 1).

The final rule revising part 170 license fees will not become effective before August 1991, which will be too late for the Commission to collect the budgeted costs of $1.3 million for its export and import activities in FY 1991. Therefore, to comply with the requirements of Public Law 101-508, the NRC will assess these costs to operating power reactors for FY 1991 only, on the basis of the criteria of who can equitably and practicably afford to pay. In future years, the costs associated with these activities are expected to be recovered under the revised part 170.

As a matter of policy, the Commission, in accordance with the Regulatory Flexibility Act, has decided to establish a maximum fee for small entities. As a result of placing a ceiling on the annual fee for small entities, $4.9 million must be collected from other NRC licensees. In order for the Commission to recover 100 percent of its budget authority in accordance with the Public Law, the Commission will recover $4.3 million from operating power reactors and $.6 million from large entities licensed under the materials program (Option 2).

In summary, the Commission has decided that the $33.3 million identified for the three categories described above be distributed among the NRC classes of licensees as follows:

$28.9 million to operating power reactors;

$1.9 million to fuel facilities; and

$2.5 million to other materials licenses.

This distribution results in an additional charge of approximately $259,000 per operating power reactor, $143,500 for each HEU, LEU and UF_6 fuel facility; $35,900 for other fuel facilities and waste disposal licensees in Category 4A; $1,500 for each materials licensee in a category that generates a significant amount of low level waste, and $100 for other material licensees. When added to the base annual fee of approximately $2.7 million per reactor, this will result in an annual fee of approximately $2.9 million per operating power reactor. The total fuel facility annual fee would be between $683,000 and $1.6 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

These additional charges would recover NRC costs not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of Commission policy decisions. However, because of the previously discussed Commission policies, the NRC will recover them from the designated classes of licensees. In adopting this approach, the Commission notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765,770 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101–508 have acknowledged the D.C. Circuit's holding that the Commission was within its legal discretion not to impose fees on all licensees.

For FYs 1992 through 1995, those annual fees of less than $100,000 will be billed once a year during the first quarter of the FY. Because there are thousands of licensees who would pay less than $100,000 per year, quarterly billings would impose additional administrative costs upon the NRC that cannot be justified. Annual fees of $100,000 or more will be billed on a quarterly cycle.

V. Section-by-Section Analysis

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

Part 52

Section 52.19 Permit and Renewal Fees

Section 52.19 is amended to remove the reference to deferred recovery.

Section 52.49 Fees for Review of Applications

Section 52.49 is amended to remove the reference to deferred recovery.

Part 71

Section 71.0 Purpose and Scope

Section 71.0(c) is amended to include certificate of compliance holders.

Section 71.4 Definitions

In this section, the term "certificate holder" is added to mean a person who holds a Certificate of Compliance or other package approval issued by the Commission.

Section 71.93 Inspection and Tests

Section 71.93(a) is broadened to include certificate holders as well as licensees.

Part 170

Section 170.2 Scope

This section is modified to add new paragraphs (o), (p) and (q). Paragraph (o) will expand the scope of part 170 to cover those persons who may be potential applicants and file documents, analyses, or reports for Commission review and/or consult with the Commission. This may include any company, corporation, individual, unit of State or local government, or any other party over whom NRC has regulatory authority under its enabling legislation or as established in attendant regulations. This amendment is to clarify that, in the event a person aborts the attempt to develop and seek a license and never files an application with the NRC after the NRC has spent time consulting with a potential applicant and/or reviewing application related documents, analyses, or reports, that the NRC will recover, through fees, any preapplication/licensing review costs. Paragraph (p) expands the scope of part 170 to cover an applicant for or holder of an import or export license issued in accordance with part 110 of this chapter. Paragraph (q) expands the scope of part 170 to cover Agreement State licensees who register under the general license requirements of 10 CFR part 150 including NRC inspections conducted of activities covered under the general license. These actions are consistent with the intent of Congress to assess fees so that each applicant, licensee, or person pays NRC the full cost of all identifiable regulatory services received by the applicant, licensee, or person.

Section 170.3 Definitions

Four definitions are added: *Act*, meaning the Atomic Energy Act; *Agreement State*, now used in part 170 because Agreement State licensees who file Form 241 with the NRC for review or who receive NRC inspections under the reciprocity provisions of 10 CFR 150.20 will become subject to the licensing and inspection fees of this part and *High Enriched Uranium* and *Low Enriched Uranium* because fees are included for these specific categories of export and import licenses.

Section 170.11 Exemptions

This section is amended to remove the current exemptions in § 170.11(a) (1), (2), (8), (9) and (11). As a result, import and export licensees will be subject to the fees established in §§ 170.21 and 170.31, and State and local government agencies and Indian Tribes and Indian organizations, and licenses issued by the NRC specifically authorizing depleted uranium for shielding are subject to the licensing and inspection fees in § 170.31 as well as the annual fees established for the first time in § 171.16.

Section 170.12 Payment of Fees

This section is amended to remove the language in paragraphs (b), (c), (d) and (e)(2) relating to deferral of fees for review of standardized reactor designs because these costs will no longer be deferred but will be assessed on or after the effective date of this final rule.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1991 costs. Accordingly, the professional staff-hour rate for NRC for FY 1991 for all fee categories that are based on full cost is $115 per hour, or $200,900 per direct FTE. This rate is based on the FY 1991 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF as follows:

1. All direct FTEs are identified by mission area (see Table II).

TABLE II.—ALLOCATION OF DIRECT FTEs BY MISSION AREA

Mission area	No. of direct FTEs[1]
Reactor Safety & Safeguards Regulation	1015.2
Nuclear Safety Research	148.1
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	273.9
Special and Independent Reviews, Investigations, and Enforcement	71.0
Nuclear Material Management and Support	22.0
Total direct FTE	[2] 1530.2

[1] Regional employees are counted in the office of the program each supports.
[2] In FY 1991, 1530.2 FTEs of the total 3,160 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,629.8 FTEs will be considered overhead and general and administrative.

2. In determining the cost for each direct labor FTE the following approach is used: NRC budgeted costs are allocated to the following four major categories (see Table III):

(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct program support, the use of contract or other services in support of the line organization's direct program, is

excluded because these costs are charged directly through the various categories of fees.

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

Using this method, which was described in the proposed rule published December 1, 1989 (54 FR 49763), and excluding direct Program Support funds, the remaining $307.4 million allocated uniformly to the direct FTEs (1530.2) results in a rate of $200,900 per FTE for FY 1991. The Direct FTE Hourly Rate is $115 per hour (rounded down to the nearest whole dollar). This rate is calculated by dividing $307.4 million by the number of direct FTEs (1530.2 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." This section is revised to indicate that the professional staff-hour rate for FY 1992 through 1995 will be published as a Notice in the Federal Register during the first quarter of each fiscal year.

TABLE III.—FY 1991 BUDGET AUTHORITY BY MAJOR CATEGORY

[dollars in millions]

Salaries and benefits	$213.8
Administrative support	74.6
Travel	12.4
Total nonprogram support obligations	$300.8
Program Support	144.5
Total Budget Authority	$445.3
Less Program support (Direct Program)	137.9
Budget Allocated to Direct FTE	$307.4

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1991 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1991 rate shown in § 170.20.

Section 170.21, Category J, Special Projects, is amended to (1) eliminate the ceiling of $50,000 for topical report reviews and (2) provide for the recovery of preapplication/licensing activities. The fees for these reviews are based on full-cost recovery. Again, this action will recover the full cost to the NRC of all identifiable regulatory services an applicant licensee, or person receives.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989 and July 2, 1990 rules, as appropriate. With respect to topical report applications currently on file and which are still pending completion of the review, for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the cost incurred after any applicable ceiling was reached through the effective date of this rule will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after the effective date of this rule will be assessed at the rate established by § 170.20. Footnote 4 is removed because the costs for standardized reactor design reviews will no longer be deferred but will be assessed on or after the effective date of this final rule. Footnote 5 is removed because the ceiling for topical report reviews is eliminated.

In § 170.21, a new Category K, import and export licenses, is added to recover those costs that are expended on applications filed with the Commission on or after the effective date of the final rule for issuing import or export licenses for production and utilization facilities and components for production and utilization facilities that are subject to NRC import and export regulations of part 110. In this final rule, the fees have been changed to flat fees and must be remitted with the application for the license or amendment. This represents a change from the proposed rule where the fees were to be assessed based on the professional staff hours expended for the review of the application.

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

The licensing and inspection fees in this section are also modified to reflect the FY 1991 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are increased by 25 percent across the board to reflect the increase in the professional hourly rate from $92 per hour in FY 1990 to $115 per hour in FY 1991. The increase is applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D and 10.B, and will be assessed for applications filed or inspections conducted on or after the effective date of the final rule.

For example, an industrial radiography licensee (Category 3.O.) will pay revised license and inspection fees as follows:

Type of fees	Current fees	Increase (%)	Final FY 1991 fees
Application	$2,400	25	$3,000
Renewal	1,400	25	1,800
Amendment	390	25	490
Routine inspection	920	25	1,200
Nonroutine inspection	2,000	25	2,500

Most of this increase is due to the fact that certain overhead and G&A costs were previously excluded in developing the professional hourly rate and now have been included in the rate to recover approximately 100 percent of the NRC's budget authority for FY 1991. For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services) the revised hourly rate of $115, as shown in § 170.20, will apply to those professional staff hours expended on or after the effective date of this rule.

New inspection fees have been added for fee categories 9A through 9D. The NRC has conducted a pilot inspection program of manufacturers and initial distributors of sealed sources and devices containing a sealed source. The NRC plans to continue this inspection program. To recover the costs related to these inspections, fees for all routine and nonroutine inspections conducted on or after the effective date of the final rule will be assessed on a per-inspection basis. The fees assessed for both routine and nonroutine inspections will be based on the full cost of conducting the inspection (professional staff hours and any contractual services costs expended) and will be billed quarterly in accordance with § 170.12(g). Fees for routine inspections of these manufacturers and distributors are estimated to range from $2,000 to $3,000 on the basis of information gathered on some of the previous inspections. The inspection fees are payable upon notification by the Commission. Fees for inspection costs would include preparation time, time on the site, and documentation time related to the specific inspection, but would exclude the time involved in processing and issuing a notice of violation or a civil penalty.

New inspection fees have also been added for fee categories 10A and 10B. The NRC has completed Phase One of a pilot program relating to the transportation package-supplier inspection program. On the basis of the results of Phase One, the NRC is proceeding to implement a permanent transportation package-suppliers inspection program. This revision is in response to the fact that NRC is conducting inspections focused on implementation and procedures of part 71 QA programs. Fees for all routine and nonroutine inspections conducted on or after the effective date of the final rule will be assessed on a per-inspection basis and will be billed quarterly based on the full cost of conducting the inspections. The inspection fees are payable upon notification by the Commission that they are due. Inspection costs would include preparation time, time on the site, documentation time, and any associated contractual services costs but would exclude the time involved in processing and issuing a notice of violation or a civil penalty. Fees for routine inspections of these programs are estimated to range from $6,000 to $22,000 based on information gathered on some of the previous inspections.

Fee Category 12, Special Projects, is revised to (1) eliminate the ceiling of $50,000 for topical report reviews and (2) provide for recovery of preapplication/licensing activities. Fees for these reviews will be based on full-cost recovery. The footnotes to § 170.31 are revised accordingly.

A new category 15, import and export licenses, is added in order to assess fees for the specific licenses issued by the NRC, pursuant to part 110, covering the import and export of special nuclear material, source material, byproduct material, heavy water (D_2O), tritium and nuclear grade graphite. Applications for import and export licenses received on or after the effective date of the final rule will become subject to the fees in part 170 including those route approvals that may be required in conjunction with an import license. In this final rule, two changes have been made to the category. First, heavy water, tritium and nuclear grade graphite have been added because the Commission issues specific licenses covering these items. Second, the fees have been changed to flat fees and must be remitted with the application for the license. This represents a change from the proposed rule where the fees were to be assessed based on the professional staff hours expended for the review of the application.

A new Category 16, reciprocity, is added to include an application fee of $600 to recover the costs expended by the Commission for the review of registrations (Form 241) which are filed by an Agreement State licensee indicating that the licensee intends to conduct activities in a non-Agreement State under the reciprocity provisions of § 150.20. Also included in the category is the reference to the inspection fees, which was a part of the proposed rule. Inspection fees will be assessed to those Agreement State licensees who are inspected by the NRC. The inspection fees assessed will be those inspection fees in § 170.31 for the fee category applicable to the license. These licensing and inspection fees are applicable to those applications filed with or inspections conducted by the NRC on or after the effective date of this final rule. The license fee represents a change from the proposed rule.

On October 16, 1986 (51 FR 36935), the NRC published a final rule in the **Federal Register** relating to 10 CFR part 35. As part of the final rule, the *in vivo* general license contained in § 35.31 was eliminated from the regulations. The Commission indicated that the former general licensees, all of whom were physicians, would receive a specific NRC license covering the clinical procedures authorized by the former general license. Eighty-nine new specific licenses were issued by the NRC in response to the applications received from the former general licensees. The Commission granted these specific licensees an exemption from part 170 application and renewal fees under 10 CFR 170.11(b) as long as the licensee's program was limited to the material uses described in § 35.31. The Commission will continue to honor that exemption from part 170 fees. However, these licensees are now subject to the new annual fees of part 171 (Category 7C) in that they will be expected to pay their share of the generic regulatory costs in order for the Commission to meet the statutory mandate of 100 percent recovery of its budget authority for FY 1991. Accordingly, these licensees will be billed annual fees in accordance with § 171.16 of these final regulations.

Part 171

Section 171.1 Purpose

This section is revised to include persons holding licenses to operate test and research reactors, facility and materials licenses, Certificates of Compliance, sealed source and device registrations, and approvals for QA programs who will be assessed an annual fee in addition to those persons licensed to operate a power reactor. These entities include those Government agencies that hold specific NRC licenses, approvals, certificates, or registrations.

Section 171.3 Scope

The scope of part 171 is expanded from any person holding a part 50 operating power reactor license, to any person holding a part 50 operating license, or a materials license, a holder of a Certificate of Compliance, a holder of a sealed source and device registration, or a holder of a Quality Assurance Program approval as defined in this part. A Government agency that holds any of these specific licenses, approvals, or certificates is also included within the scope of part 171.

Section 171.5 Definitions

The definitions of *Byproduct Material, Certificate Holder, Government Agency, High Enriched Uranium Fuel, Low Enriched Uranium Fuel, Materials*

License, Quality Assurance Program Approval, Registration Holder, Research Reactor, Source Material, Special Nuclear Material, and *Testing Facility* are added because these facilities and materials licensees, and holders of certificates, registrations, and approvals are subject to the appropriate annual fees in this part.

The definition of *Budget Authority* replaces the definition of *Budgeted Obligations* to clarify that the fees are based on the budget authority or the appropriation granted to the NRC for the FY by the Congress. The definition of *Overhead Costs* is revised to clarify that organizations previously excluded from the fee base are included because the Commission views these budgeted costs as support for all of its regulatory services provided to applicants, licensees, and certificate, registration and approval holders. These costs must be recovered in accordance with Public Law 101–508.

Section 171.11 Exemptions

A separate paragraph (a) has been added to provide for a specific exemption from annual fees for licenses issued to nonprofit educational institutions under certain conditions. The criteria for considering exemption requests from the annual fee for operating reactors will be continued. With respect to requests for exemption from the materials annual fees, the Commission proposes to set a high threshold for eligibility for any requested exemption. It is the Commission's expectation that exemptions will be rarely granted. To be considered for exemption, the licensee must provide the NRC clear and convincing evidence that the annual fee is not based on a fair and equitable allocation of the NRC costs. Factors that the NRC will consider in reaching a decision on exemptions are:

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

(2) Whether there is evidence that the generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of license nor explicitly allocated to the licensee by Commission policy decision; and

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

Section 171.13 Notice

This section is revised to indicate that the amount of the annual fees for reactor and materials licensees would be published as a Notice in the **Federal Register** during the first quarter of FY 1992 through 1995 unless otherwise specified by the Commission. This requirement is consistent with past practice with respect to operating power reactors and with the requirement that the annual fees of less than $100,000 be paid once a year (during the first quarter of the FY). Those annual fees of $100,000 or more would be paid on a quarterly basis. If the Commission is unable to publish a notice during the first quarter of Fiscal Years 1992–1995, quarterly payments of the annual fees of $100,000 or more shall continue and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until such time as a Notice concerning the revised amount of the fees for the fiscal year are published by the Commission.

Section 171.15 Annual Fee: Reactor Operating Licenses

The section heading is revised to indicate that both power reactors and nonpower (test and research) reactors will be assessed annual fees. Section 171.15(a) is revised to include test and research reactors in addition to operating power reactors, and paragraphs (b) and (c) are revised to take into consideration the requirement of the Public Law to recover approximately 100 percent of the NRC budget. Paragraph (b) provides the basis for proposing a base annual fee to be assessed to each operating power reactor according to the principle that those licensees requiring the greatest expenditure of NRC resources will pay the greatest annual charge. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1991 budget mission areas and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1991 BUDGET TO POWER REACTORS BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Reactor safety and safeguards regulation (RSSR):				
Power reactor applications reviews	$1400	15.9	$1400	15.9
Standard reactor designs reviews	1473	32.6	200	12.2
Other reviews	350	3.7	0	1.2
Reactor license renewal	1408	14.7	1408	14.7
Reactor performance evaluation	718	33.6	718	33.6
Evaluation of licensee performance	700	33.7	700	33.7
Reactor accident management	1000	11.3	1000	11.3
Human performance evaluation	650	3.2	650	3.2
Reactor operator examinations	6250	51.8	6010	48.8
Resident inspectors		190.7		190.7
Region-based inspections	5708	279.5	5708	274.3
Specialized inspections	3117	65.6	3117	65.6
Project management		133.4		133.4
Safety evaluation of licensing actions	9191	127.7	9191	127.7
Regulatory improvements	335	17.8	335	17.8
RSSR mission area total			$30,437	984.1
Nuclear safety research (NSR):				
Integrity of reactor components	$27230	21.5	$27230	21.5
Prevent damage to reactor cores	21675	32.0	21675	32.0
Reactor containment performance	17330	12.0	17330	12.0
Generic and USIs	3180	28.1	3180	28.1
Standard and advanced reactors	1825	6.0	1825	6.0

TABLE IV.—ALLOCATION OF NRC FY 1991 BUDGET TO POWER REACTORS BASE FEES [1]—Continued

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Fuel cycle/transportation/safeguards	1025	4.0	631	2.0
Developing and improving regulations	5065	15.0	5065	15.0
Severe accident implementation	2669	10.0	2669	10.0
Radiation protection/health effects	4600	11.0	3450	8.3
NSR mission area total			$83,055	134.9
Nuclear material and low level waste safety & safeguards regulation:				
Threat and event assessment/international safeguards	$430	12.8	$430	8.3
Decommissioning	1200	14 4	100	4.2
NMLLWSSR mission area total			$530	12.5
Special and independent reviews, investigations, and enforcement:				
Diagnostic Evaluations	$350	7.0	$350	7.0
Incident Investigations	50	3.0	50	3.0
NRC Incident Response	2200	27.0	2200	27.0
Operational Data Analysis	1973	25.0	1873	23.0
Performance Indicators	980	4.0	980	4.0
Operational Data Collection/Dissemination	2147	5.0	2147	5.0
SIRIE mission area total			$7600	69.0
TOTAL			$121,622	1,200.5
Total base fee amount allocated to power reactors—[2]$362.8 million Less estimated part 170 power reactor fees— −71.9 million Part 171—Base fees for operating power reactors—$290.9 million				

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1991 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	$2,673,000
2. Beaver Valley 2	do	2,673,000
3. Braidwood 1	do	2,673,000
4. Braidwood 2	do	2,673,000
5. Byron 1	do	2,673,000
6. Byron 2	do	2,673,000
7. Callaway 1	do	2,673,000
8. Comanche Peak 1	do	2,673,000
9. Diablo Canyon 1	do	2,659,000
10. Diablo Canyon 2	do	2,659,000
11. Farley 1	do	2,673,000
12. Farley 2	do	2,673,000
13. Ginna	do	2,673,000
14. Haddam Neck	do	2,673,000
15. Harris 1	do	2,673,000
16. Indian Point 2	do	2,673,000
17. Indian Point 3	do	2,673,000
18. Kewaunee	do	2,673,000
19. Millstone 3	do	2,673,000
20. North Anna 1	do	2,673,000
21. North Anna 2	do	2,673,000
22. Point Beach 1	do	2,673,000
23. Point Beach 2	do	2,673,000
24. Prairie Island 1	do	2,673,000
25. Prairie Island 2	do	2,673,000
26. Robinson 2	do	2,673,000
27. Salem 1	do	2,673,000
28. Salem 2	do	2,673,000
29. San Onofre 1	do	2,659,000
30. Seabrook 1	do	2,673,000
31. South Texas 1	do	2,673,000
32. South Texas 2	do	2,673,000
33. Summer 1	do	2,673,000
34. Surry 1	do	2,673,000
35. Surry 2	do	2,673,000
36. Trojan	do	2,659,000
37. Turkey Point 3	do	2,673,000

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

Reactors	Containment type	Annual fee
38. Turkey Point 4	do	2,673,000
39. Vogtle 1	do	2,673,000
40. Vogtle 2	do	2,673,000
41. Wolf Creek 1	do	2,673,000
42. Zion 1	do	2,673,000
43. Zion 2	do	2,673,000
44. Catawba 1	PWR—Ice Condenser	2,658,000
45. Catawba 2	do	2,658,000
46. Cook 1	do	2,658,000
47. Cook 2	do	2,658,000
48. McGuire 1	do	2,658,000
49. McGuire 2	do	2,658,000
50. Sequoyah 1	do	2,658,000
51. Sequoyah 2	do	2,658,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment	2,658,000
2. Calvert Cliffs 1	do	2,658,000
3. Calvert Cliffs 2	do	2,658,000
4. Ft. Calhoun 1	do	2,658,000
5. Maine Yankee	do	2,658,000
6. Millstone 2	do	2,658,000
7. Palisades	do	2,658,000
8. Palo Verde 1	do	2,644,000
9. Palo Verde 2	do	2,644,000
10. Palo Verde 3	do	2,644,000
11. San Onofre 2	do	2,644,000
12. San Onofre 3	do	2,644,000
13. St. Lucie 1	do	2,658,000
14. St. Lucie 2	do	2,658,000
15. Waterford 3	do	2,658,000
Babcock & Wilcox:		
1. Arkansas 1	do	2,658,000
2. Crystal River 3	do	2,658,000
3. Davis Besse 1	do	2,658,000
4. Oconee 1	do	2,658,000
5. Oconee 2	do	2,658,000
6. Oconee 3	do	2,658,000
7. Three Mile Island 1	do	2,658,000
General Electric		
1. Browns Ferry 1	Mark I	2,648,000
2. Browns Ferry 2	do	2,648,000
3. Browns Ferry 3	do	2,648,000
4. Brunswick 1	do	2,648,000
5. Brunswick 2	do	2,648,000
6. Clinton 1	Mark III	2,873,000
7. Cooper	Mark I	2,648,000
8. Dresden 2	do	2,648,000
9. Dresden 3	do	2,648,000
10. Duane Arnold	do	2,648,000
11. Fermi 2	do	2,648,000
12. Fitzpatrick	do	2,648,000
13. Grand Gulf 1	Mark III	2,873,000
14. Hatch 1	Mark I	2,648,000
15. Hatch 2	do	2,648,000
16. Hope Creek 1	do	2,648,000
17. LaSalle 1	Mark II	2,664,000
18. LaSalle 2	do	2,664,000
19. Limerick 1	do	2,664,000
20. Limerick 2	do	2,664,000
21. Millstone 1	Mark I	2,648,000
22. Monticello	do	2,648,000
23. Nine Mile Point 1	do	2,648,000
24. Nine Mile Point 2	Mark II	2,664,000
25. Oyster Creek	Mark I	2,648,000
26. Peach Bottom 2	do	2,648,000
27. Peach Bottom 3	do	2,648,000
28. Perry 1	Mark III	2,873,000
29. Pilgrim	Mark I	2,648,000
30. Quad Cities 1	do	2,648,000
31. Quad Cities 2	do	2,648,000
32. River Bend 1	Mark III	2,873,000
33. Susquehanna 1	Mark II	2,664,000
34. Susquehanna 2	do	2,664,000
35. Vermont Yankee	Mark I	2,648,000
36. Washington Nuclear 2	Mark II	2,650,000
Other Reactors:		
1. Three Mile Island 2	B&W PWR-Dry Containment	2,658,000
2. Rancho Seco	do	2,644,000
3. Big Rock Point	GE Dry Containment	2,648,000
4. Shoreham	GE Mark II	2,664,000

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

Reactors	Containment type	Annual fee
5. Yankee Rowe	Westinghouse PWR Dry Containment	2,673,000
6. Ft. St. Vrain	High Temperature Gas Cooled	2,155,000

The "Other Reactors" listed in Table V have not been included in the fee base. With respect to Big Rock Point and Yankee Rowe, the Commission in this final rule hereby grants partial exemptions from the FY 1991 annual fees based on requests filed with the Commission in accordance with § 171.11. The total amount of $733,000 to be paid by the two licensees has been subtracted from the total amount to be assessed operating power reactors as a surcharge. The Commission, in this final rule, hereby grants full exemptions from the FY 1991 annual fees to Ft. St. Vrain, Rancho Seco, Shoreham, and Three Mile Island 2 based on the fact that these reactors are either permanently or prematurely shutdown and do not intend to operate in the future.

Consistent with past policy and practice, if an applicant receives its operating license during the year, it will pay only a prorated annual fee for that year in accordance with the provisions of § 171.17. Fees will continue to be collected under part 170 up to the time of issuance of the OL.

Paragraph (c) is revised to assess an additional charge, which will be added to the base annual fee for each operating power reactor shown in Table V, and to provide the method for calculating the additional charge. This charge will recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of the Public Law. The Commission has made a policy decision to recover these costs from operating power reactors.

The FY 1991 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1991 budgeted costs (dollars in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	$3.7
b. international cooperative safety program and international safeguards activities	4.9
c. 60% of low level waste disposal generic activities; and	6.0
d. uranium enrichment activities	1.1
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. licensing and inspection of nonprofit educational institutions; and	2.2
b. cost not recovered from Part 171 for small entities	4.3
3. Standard reactor design approval and certification reviews (FY 1991 only)	5.4
4. Export and import licensing activities (FY 1991 only)	1.3
Subtotal	$28.9
Less amount to be assessed to small, older reactors with partial exemption under Part 171	−.7
Total budgeted costs	$28.2

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating power reactors}} = \frac{\$28.2 \text{ million}}{109} = \$259{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,673,000 and an additional charge of $259,000 for a total annual fee of $2,932,000 for FY 1991.

A new paragraph (d) is added that shows, in summary form, the amount of the total FY 1991 annual fee, including the added charge, to be assessed for each major type of operating power reactor.

Paragraphs (e) and (f) are added which show the amount of the FY 1991 annual fee for non-power (test and research) reactors and indicate that for FY 1992–1995 the annual fees for operating reactors will be calculated and assessed in accordance with § 171.13. In FY 1991, $500,000 in costs are attributable to those commercial and Federal government licensees that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in an annual fee of $50,000 per operating license.

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

Paragraphs (a), (b), (c), (d), and (e) are added and establish annual fees for materials licensees, including Government agencies licensed by the NRC. Paragraph (a) indicates those persons who would be subject to the annual fees. Paragraph (b) provides the basis upon which the base annual fees will be determined. Paragraph (c) provides the criteria whereby a licensee, who qualifies as a small entity under the Commission's regulations, may pay a reduced annual fee established for a small entity. Paragraph (d) is a listing of the annual fees to be assessed. These fees are necessary to recover the FY 1991 generic costs totalling $46.0 million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

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

TABLE VI.—ALLOCATION OF NRC FY 1991 BUDGET TO FUEL FACILITY BASE FEES [1]

Total program element	Program support $,K	FTE	Allocated to fuel facility	Program support $,K FTE
Nuclear safety research:				
Fuel cycle/transportation/safeguards	$1025	4.0	$50	0.5
Rad. protection/health effects	4600	2.0	101	0.3
NSR mission area total			$151	0.8
Nuclear material and low level waste safety and safeguards regulation:				
Fuel facilities/spent fuel	$2730	39.1	$1390	31.2
Event evaluation		16.8		3.4
Safeguards licensing/inspection	775	21.2	655	16.8
Decommissioning	1200	14.4	220	2.0
NMLLWSSR mission area total			$2,265	53.4
Total			$2,416	54.2
Total base fee amount allocated to fuel facilities—[2] $13.3 million Less part 170 fuel facility fees— −2.7 million Part 171—base fees for fuel facilities—$10.6 million				

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

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

TABLE VII.—ALLOCATION OF FY 1991 BUDGET TO MATERIAL USERS BASE FEES [1]

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Safety Research Mission Area:				
Radiation Protection/Health Effects	$4600	11.0	$1049	2.5
Nuclear Material & Low Level Waste Safety & Safeguards Regulation:				
Licensing/Inspection of Materials Users	2172	105.3	2154	104.4
Event Evaluation		16.8		13.4
Decommissioning	1200	14.4	880	7.0
NMLLWSSR Mission Area Total	3372	136.5	3034	124.8
Special and Independent Reviews, Investigations, and Enforcement:				
Operational Data Analysis(PE)	1973	25	100	2.0
Total			4,183	129.3
Base Amount Allocated to Materials Users (millions)				[2] $30.2
Less Part 170 Material Users Fees (millions)				−3.0
Part 171 Base Fees for Material Users (millions)				27.2

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

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

The allocation of the NRC's $10.6 million in budgeted costs to the individual fuel facilities is based primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Since the three high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

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

	Annual fee (dollars in thousands)		
	Safeguards	Safety	Total
High Enriched Fuel:			
United Nuclear Corporation	$750	$750	$1,500
Nuclear Fuel Services	750	750	1,500
Babcock and Wilcox	750	750	1,500
Subtotal	2,250	2,250	4,500
Low Enriched Fuel:			
Advanced Nuclear Fuels	156	537	693
Babcock and Wilcox	156	537	693
General Electric	156	537	693
Westinghouse	156	537	693
Combustion Engineering (Hematite)	156	537	693
Combustion Engineering (Windsor)	156	537	693
Subtotal	936	3,222	4,158
UF_6 Conversion:			
Allied Signal Corp	—	540	540
Sequoyah Fuels Corp	—	540	540
Subtotal	—	1,080	1,080
Other fuel facilities (9 facilities at $100,000 each)	—	900	900
Total	3,186	7,452	10,638

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that 90% of the $1.9 million for uranium recovery is attributable to uranium mills in operation, standby, or with reclamation plans under review, and in-situ leach facilities (Class I facilities). The remaining 10% would be allocated to the other uranium recovery facilities (e.g. R&D in-situ leach projects, secondary recovery operations and heap-leach operations). The resulting annual fees for each class of licensee are:

Class I facilities $100,000
Other facilities $67,000

For spent fuel storage licenses, the Commission is changing the final rule. Based on the comments received, as indicated in section III of this final rule, the proposed fee structure would result in unintended effects on the implementation of the new part 72 rule. That is, instead of applying for a Certificate of Compliance, vendors would apply for a topical report approval in order to avoid the annual fee. This would result in shifting the fee to the specific ISFSI licensees. Therefore, the Commission will charge the generic costs of $1.5 million uniformly to those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in a revised annual fee of $375,000. Fee Category 13 of § 171.16 has been modified to include annual fees for general licenses for storage of spent fuel under § 72.210 of part 72 of this chapter.

To equitably and fairly allocate the $27.2 million attributable to the approximately 9,000 diverse material users and registrants, the annual fee was based on the part 170 new application and routine inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach provided a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also considered the inspection frequency, because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for each category of license is developed as follows:

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

The constant is the multiple necessary to recover $27.2 million and is 2.4 for FY 1991. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1991, unique costs of $2.4 million were identified for the medical improvement program which is attributable to medical licensees. Materials licensees may pay a reduced fee if they certify on NRC Form 526 that they are a small entity.

To recover the $4.8 million attributable to the transportation class of licensees, $1.2 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under new Category 18. The remaining transportation costs ($3.6 million) for generic activities are allocated to holders of approved QA plans. The annual fee for approved QA plans is $29,000 for users and fabricators and $1,700 for users only.

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

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$1.5 million.
Part 70—Low enriched fuel.	$693,000.
Part 40—UF_6 conversion	$540,000.
Part 40—Uranium recovery.	$67,000 to $100,000.
Part 30—Byproduct Material.	[1]$290 to $10,700.
Part 71—Transportation of Radioactive Material.	$1,700 to $29,000.
Part 72—Independent Storage of Spent Nuclear Fuel.	$375,000.

[1] Does not consider the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is $200,000.

If a person holds more than one license, certificate, registration, or approval, the annual fee is the cumulative total of annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the same license. Government agencies licensed by the NRC will pay the annual fee for the particular fee category(ies) applicable to the license, certificate, registration or approval, except for those Federal military agencies to which the NRC has granted a "Master" materials license (broad-scope license covering multiple activities performed at multiple locations), in which case the annual fee for fee Category 17 is applicable.

Paragraph (e) establishes an additional charge which is added to the base annual fees shown in Paragraph (d) of this final rule. This surcharge has been shown, for convenience, with the applicable categories in paragraph (d). The additional charge will recover approximately 40 percent of the NRC budgeted costs of $9.8 million relating to LLW disposal generic activities because 40 percent of the LLW is generated by these licensees. Although these NRC LLW disposal regulatory activities are not directly attributable to materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of the Public Law. The Commission has made a policy decision to recover approximately 40 percent of these LLW costs from materials licensees. The FY 1991 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1991 budgeted costs (dollars in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities	$3.8

Of the $3.8 million budgeted costs shown above for LLW activities, 50 percent of the amount ($1.9 million) would be allocated to fuel facilities included in part 171 (20 facilities), as follows: $143,400 per HEU, LEU and UF_6 facility and $35,800 for the other 9 fuel facilities. The remaining 50 percent ($1.9 million) would be allocated to the material licensees in categories that generate low level waste (1,229 licensees) as follows: $1,400 per materials licensee except for those in Categories 4A and 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for Categories 4A and 17, which also generate and/or dispose of low level waste, is $35,800 for Category 4A and $22,500 for Category 17. Based on comments received, Categories 2.A.(2) and 7C have been deleted in this final rule and will not be subject to the surcharge because the low level waste generated by these licensees is either held for decay and disposed of through incineration or normal trash removal, or disposed of on site.

Of the $4.9 million not recovered from small entities, $0.6 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of $100 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, would pay a base annual fee of $1,500,000 and an additional charge of $143,500 for LLW activities and small entity costs. A medical center with a broad-scope program would pay a base annual fee of $8,400 and an additional charge of $1,500, for a total annual fee of $9,900 for FY 1991.

Section 171.17 Proration

This section is revised to indicate that only the annual fees for operating power reactors that may be issued a license during the FY will be prorated depending on when the license is issued. The annual fee for all other licenses, certificates and registrations, and QA program approvals issued during the year will not be prorated. Annual fees for these licenses, certificates and registrations, and QA program approvals will be assessed only for those licenses and approvals in effect on October 1 each fiscal year. For FY 1991, those licenses, certificates, and registrations, and QA program approvals in effect on the effective date of the final rule will be assessed an annual fee. Licenses, certificates, registrations, and approvals issued during FY 1992, for example, will be assessed an annual fee in the subsequent FY. For materials licensees, this system will reduce the NRC's administrative burden of tracking the numerous licenses, certificates, registrations, and approvals issued during the FY.

Section 171.19 Payment

This section is revised in its entirety. Paragraph (a) indicates the method of payment to be used in paying the annual fees and is consistent with the existing payment provisions for the current fee schedules in part 170. For FY 1992 through 1995, annual fees of less than $100,000 are to be paid once a year during the first quarter of the FY as billed by the NRC because of the large number of licensees and the relatively small amount of these bills. Annual fees of $100,000 or more will be billed and paid quarterly. For FY 1992 only, the NRC will defer the due date of the first quarterly bills for annual fees greater than $100,000 and total bills for annual fees less than $100,000 until the second quarter of FY 1992.

The NRC anticipates that the first, second, and third quarterly payments for FY 1991 will have been made by operating power reactor licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee. For those fuel cycle licensees, material licensees, and holders of certificates, registrations, and QA program approvals that are subject to the annual fees for the first time in FY 1991, the NRC will send a bill for the full amount of the annual fee to the licensee, or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the rule and interest shall accrue from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

Section 171.23 Enforcement

This section is amended in its entirety to indicate that submitting an inaccurate certification to the Commission with respect to qualifying as a small entity under the Regulatory Flexibility Criteria may result in (1) the suspension or revocation of any licenses held by the person and (2) punitive action pursuant to 18 U.S.C. 1001.

Section 171.25 Collection of Interest, Penalties, and Administrative Costs

This section is amended to include all annual fees assessed in accordance with §§ 171.15 and 171.16.

VI. 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 this final regulation.

VII. Paperwork Reduction Act Statement

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

VIII. Regulatory Analysis

With respect to part 170, this final rule was developed pursuant to title V of the

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

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980). The Court held that (1) the NRC had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

With respect to part 171, Public Law 101–239 required the NRC to establish annual fees for regulatory services provided to its applicants and licensees that, when added to other amounts collected, equaled 33 percent of the Commission's costs of providing those services for FY 1991. On August 17, 1990, the NRC published in the **Federal Register** (55 FR 33789) the annual fees for FY 1991 based on the Public Law. On November 5, 1990, the Congress amended the Public Law. For FYs 1991 through 1995, Public Law 101–508 requires that approximately 100 percent of the NRC budget authority be recovered. To accomplish this statutory requirement, the NRC, in accordance with 10 CFR 171.13, is publishing the final amount of the FY 1991 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. This Public Law and the Conference Report specifically state that (1) the annual fees will be based on the Commission's FY 1991 budget of $465 million less the amounts collected from part 170 fees and the funds directly appropriated from the NWF to cover the Commission's high level waste program; (2) the annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and (3) the annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. Therefore, when developing the revised annual fees for operating power reactors the Commission continues to consider the various reactor vendors, the types of containment, and the location of the reactor. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986, 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*, 109 S. Ct. 1952 (1989).

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

IX. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of its budget authority through the assessment of user fees. This Act 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 new schedules of fees that are necessary to implement this Congressional mandate. The final rule results in an increase in the fees charged to all licensees, and holder of certificates, registrations, and approvals including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as appendix A to this document.

X. Backfit Analysis

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

List of Subjects

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 71

Criminal penalties, Hazardous materials—transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

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

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 52, 71, 170, and 171.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER REACTORS

1. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956 as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); sec. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 52.19 is revised to read as follows:

§ 52.19 Permit and renewal fees.

The fees charged for the review of an application for the initial issuance or renewal of an early site permit are set forth in 10 CFR 170.21 and shall be paid in accordance with 10 CFR 170.12.

3. Section 52.49 is revised to read as follows:

§ 52.49 Fees for review of applications.

The fee charged for the review of an application for the initial issuance or renewal of a standard design certification are set forth in 10 CFR 170.21 and shall be paid in accordance with 10 CFR 170.12.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

4. The authority citation for part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 71.3, 71.43, 71.45, 71.55, 71.63 (a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.6a, 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 71.0, paragraph (c) is revised to read as follows:

§ 71.0 Purpose and scope.

* * * * *

(c) The regulations in this part apply to any certificate holder and to any licensee authorized by specific license issued by the Commission to receive, possess, use, or transfer licensed material if the licensee or certificate holder delivers that material to a common or contract carrier for transport or transports the material outside the confines of the licensee's or certificate holder's facility, plant, or other authorized place of use. No provision of this part authorizes possession of licensed material.

* * * * *

6. In § 71.4, add the definition of "certificate holders" to read as follows:

§ 71.4 Definitions.

* * * * *

Certificate holder means a person who holds a certificate of compliance, or other package approval issued by the Commission.

* * * * *

7. In § 71.93, paragraph (a) is revised to read as follows:

§ 71.93 Inspection and tests.

(a) The licensee or certificate holder shall permit the Commission at all reasonable times to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, provided, constructed, fabricated, tested, stored, or shipped.

* * * * *

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

8. The heading for 10 CFR part 170 is revised to read as set forth above.

9. 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, 88 Stat. 1242, as amended (42 U.S.C. 5841).

10. In § 170.2, paragraphs (o), (p) and (q) are added to read as follows:

§ 170.2 Scope.

* * * * *

(o) Requesting preapplication/licensing review assistance by consulting with the NRC and/or by filing preliminary analyses, documents, or reports.

(p) An applicant for or a holder of a specific import or export license issued pursuant to 10 CFR part 110.

(q) An Agreement State licensee who files for or is holder of a general license under the reciprocity provisions of 10 CFR 150.20.

11. In § 170.3, the definitions "Act", "Agreement State" "High Enriched Uranium" and "Low Enriched Uranium" are added to read as follows:

§ 170.3 Definitions.

* * * * *

Act means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto;

* * * * *

Agreement State means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Act. "Nonagreement State" means any other State.

* * * * *

High Enriched Uranium means uranium enriched to 20 percent or greater in the isotope uranium-235.

* * * * *

Low Enriched Uranium means uranium enriched below 20 percent in the isotope uranium-235.

* * * * *

§ 170.11 [Amended]

12. In § 170.11, paragraphs (a)(1), (a)(2), (a)(8), (a)(9), and (a)(11) are removed and reserved.

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

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.*

(1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each.

(c) *Amendment fees and other required approvals.* (1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full

cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed except for those costs relating to amendments and other approvals for early site permits which were deferred prior to the effective date of this final rule. These costs will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) *Renewal fees.* (1) Renewal fees for material licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except for those costs deferred prior to the effective date of this final rule, as noted in paragraph (d)(3) and (d)(4) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this final rule shall 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 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 application for renewal, or remainder of those costs, at that time.

(4) 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.

(e) *Approval fees.* (1) Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed. Fees for applications or preapplication consultations and reviews subject to full cost are payable upon notification by the Commission. Each applicant will be billed at six month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(2)(i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of this final 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)(A) In the case of a design which has been approved but not certified and for which no application for certification is pending, if the design is not referenced, or if all costs are not recovered, within five years after the date of the preliminary design approval (PDA) or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time;

(B) 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 costs, at that time.

(C) 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.

* * * * *

14. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1991 budget is $115 per hour. For FY 1992 through 1995, the professional staff-hour rate will be published as a Notice in the **Federal Register** during the first quarter of each fiscal year.

15. Section 170.21 is amended by removing footnotes 4 and 5, revising the section heading, the introductory text to the section, Category J and footnote 2 and by adding a new Category K 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 types of fees	Fees [1,2]
* * * * *	
J. Special projects:	
Approvals and preapplication/ licensing activities.	Full Cost.
Inspections	Full Cost.

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and types of fees	Fees [1,2]
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110.	
Production and utilization facility or major components.	
Application	$7,000.
Amendment	$1,200.
Other production and utilization facility components:	
Application	$3,600.
Amendment	$580.

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% 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% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

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

* * * * *

16. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$500.
Renewal	$500.
Amendment	$380.
Inspections:	
Routine	$460.
Nonroutine	$1,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$690.
Renewal	$690.
Amendment	$230.
Inspections:	
Routine	$690.
Nonroutine	$800.

SCHEDULE OF MATERIALS FEES-Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for possession and use of source material for shielding:	
Application—New license	$110.
Renewal	$110.
Amendment	$110.
Inspections:	
Routine	$290.
Nonroutine	$350.
C. All other source material licenses:	
Application—New license	$790.
Renewal	$750.
Amendment	$450.
Inspections:	
Routine	$800.
Nonroutine	$1,500.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,300.
Renewal	$1,400.
Amendment	$230.
Inspections: [5]	
Routine	$2,100.
Nonroutine	$2,100.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,300.
Renewal	$2,300.
Amendment	$550.
Inspections: [5]	
Routine	$1,000.
Nonroutine	$2,000.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,400.
Renewal	$1,400.
Amendment	$460.
Inspections:	
Routine	$1,400.
Nonroutine	$1,900.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,100.
Renewal	$500.
Amendment	$310.
Inspections:	
Routine	$800.
Nonroutine	$1,200.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$500.
Renewal	$480.
Amendment	$250.
Inspections:	
Routine	$460.
Nonroutine	$690.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$1,200.
Renewal	$400.
Amendment	$350.
Inspections:	
Routine	$580.
Nonroutine	$1,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$4,600.
Renewal	$1,900.
Amendment	$460.
Inspections:	
Routine	$1,000.
Nonroutine	$1,400.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,100.
Renewal	$1,100.
Amendment	$250.
Inspections:	
Routine	$690.
Nonroutine	$690.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,600.
Renewal	$1,200.
Amendment	$350.
Inspections:	
Routine	$460.
Nonroutine	$690.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,500.
Renewal	$580.
Amendment	$390.
Inspections:	
Routine	$690.
Nonroutine	$690.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,900.
Renewal	$940.
Amendment	$290.
Inspections:	
Routine	$690.
Nonroutine	$690.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$2,300.
Renewal	$2,000.
Amendment	$500.
Inspections:	
Routine	$930
Nonroutine	$1,200.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,100.
Renewal	$1,100.
Amendment	$630.
Inspections:	
Routine	$800.
Nonroutine	$930.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only 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—New license	$1,400.
Renewal	$800.
Amendment	$400.
Inspections:	
Routine	$690.
Nonroutine	$690.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,000.
Renewal	$1,800
Amendment	$490.
Inspections: [6]	
Routine	$1,200.
Nonroutine	$2,500.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$500.
Renewal	$500.
Amendment	$380.
Inspections:	
Routine	$1,200.
Nonroutine	$1,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,800.
Renewal	$1,900
Amendment	$200.
Inspections:	
Routine	$2,100.
Nonroutine	$1,600.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,900.
Renewal	$930.
Amendment	$230.
Inspections:	
Routine	$1,600.
Nonroutine	$2,100.
5 Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,400.
Renewal	$2,000.
Amendment	$540.
Inspections:	
Routine	$800.
Nonroutine	$800.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	$690.
Nonroutine	$1,000.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$1,400.
Renewal	$1,400.
Amendment	$350.
Inspections:	
Routine	$1,200.
Nonroutine	$1,900.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,400.
Renewal	$790.
Amendment	$430.
Inspections:	
Routine	$1,200.
Nonroutine	$1,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,300.
Renewal	$2,000.
Amendment	$360.
Inspections:	
Routine	$1,600.
Nonroutine	$1,800.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$710.
Renewal	$1,000.
Amendment	$430.
Inspections:	
Routine	$1,000.
Nonroutine	$1,500.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$580.
Renewal	$400.
Amendment	$310.
Inspections:	
Routine	$690.
Nonroutine	$690.
9. Device, product or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,300.
Amendment—each device	$1,200.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$690.
Amendment—each source	$230.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$350.
Amendment—each source	$110.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$230.
Renewal	$230.
Amendment	$230.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions and supplements.	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter:	
Routine	Full Cost.
Nonroutine	Full Cost.
14. Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspection:	
Routine	Full Cost.
Nonroutine	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
a. High enriched uranium	
Application	$7,000.
Amendment	$1,200.
b. Low enriched uranium, source material, byproduct material, heavy water (D_2O) or nuclear grade graphite.	
Application	$3,600.
Amendment	$580.
c. All other export licenses/approvals	
Application	$920.
Amendment	$580.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (each filing of Form 241).	$600.
Renewal	N/A.
Amendment	N/A.
Inspections:	
Routine and nonroutine	Fees as specified in appropriate fee categories in this section.

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

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that 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.

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

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

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

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

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

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

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

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.204 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

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

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

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

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

17. The heading for 10 CFR part 171 is revised to read as set forth above:

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

Authority: Section 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).

19. Section 171.1 is revised to read as follows:

§ 171.1 Purpose.

The regulations in this part set out the annual fees charged to persons who hold licenses, Certificates of Compliance, sealed source and device registrations, and quality assurance program approvals issued by the United States Nuclear Regulatory Commission, including licenses, registrations, approvals, and certificates issued to a Government agency.

20. Section 171.3 is revised to read as follows:

§ 171.3 Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter. These regulations also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

21. In § 171.5, remove the definitions "Budgeted Obligations" and "Overhead Costs" and add the definitions of "Budget Authority," "Byproduct Material," "Certificate Holder," 'Government Agency," "High Enriched Uranium Fuel," "Low Enriched Uranium Fuel," "Materials License," "Overhead and General and Administrative Costs," "Quality Assurance Program Approval," "Registration Holder," "Research Reactor," "Source Material," "Special Nuclear Material," and "Testing Facility," to read as follows:

§ 171.5 Definitions.

* * * * *

Budget Authority means the authority, in the form of appropriations, provided by law and becoming available during the year, to enter into obligations that will result in immediate or future outlays involving Federal government funds. The appropriation is an authorization by an Act of Congress that permits the NRC to incur obligations and to make payments out of the Treasury for specified purposes. Fees assessed pursuant to Public Law 101–508 are based on NRC budget authority.

Byproduct Material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

Certificate Holder means a person who holds a certificate of compliance, or other package approval issued by the Commission.

* * * * *

Government Agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

High Enriched Uranium Fuel means uranium enriched to 20 percent or greater in the isotope uranium–235.

Low Enriched Uranium Fuel means uranium enriched below 20 percent in the isotope uranium–235.

Materials License means a byproduct material license issued pursuant to part 30 of this chapter, a source material license issued pursuant to part 40 of this chapter, or a special nuclear material license issued pursuant to part 70 of this chapter or a license for the storage of spent fuel issued pursuant to part 72 of this chapter.

* * * * *

Overhead and General and Administrative costs means:

(1) The Government benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;

(2) Travel costs;

(3) Direct overhead, e.g., supervision and support staff that directly support the NRC safety mission areas (administrative support costs, e.g., rental of space, equipment, telecommunications and supplies); and

(4) Indirect costs that would include, but not be limited to, NRC central policy direction, legal and executive management services for the Commission and special and independent reviews, investigations, and enforcement and appraisal of NRC programs and operations.

Some of the organizations included are the Commissioners, Secretary, Executive Director for Operations, General Counsel, Government and Public Affairs (except for international safety and safeguards programs), Inspector General, Investigations, Enforcement, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committees on Nuclear Waste and Reactor Safeguards, and the Atomic Safety and Licensing Board Panel and Appeal Panel. The Commission views these budgeted costs as support for all its regulatory services provided to applicants, licensees, and certificate holders, and these costs must be recovered pursuant to Public Law 101–508.

* * * * *

Quality Assurance Program Approval is the document issued by the NRC to approve the quality assurance program submitted to the NRC as meeting the requirements of § 71.101 of this chapter. Activities covered by the quality assurance program may be divided into two major groups: those activities including design, fabrication and use of packaging and those activities for use only of packaging.

Registration Holder as used in this part means any manufacturer or initial distributor of a sealed source or device containing a sealed source that holds a certificate of registration issued by the NRC or a holder of a registration for a sealed source or device manufactured in accordance with the unique specifications of, and for use by, a single applicant.

Research Reactor means a nuclear reactor licensed by the Commission under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at a thermal power level of 10 megawatts or less, and which is not a testing facility as defined in this section.

Source Material means:

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) Ores which contain by weight one-twentieth of one percent (0.05%) or more of

(i) Uranium,

(ii) Thorium, or

(iii) Any combination thereof.

Source material does not include special nuclear material.

Special Nuclear Material means:

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

Testing Facility means a nuclear reactor licensed by the Commission under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

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

22. Section 171.11 is revised to read as follows:

§ 171.11 Exemptions.

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

(1) Human use;

(2) Remunerated services to other persons;

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

(4) Activities performed under a Government contract.

(b) The Commission may, upon application, grant an exemption, in part, from the annual fee required pursuant to this part. However, filing an exemption request does not extend the date on which the bill is payable, and only timely payment in full will ensure avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

(c) An exemption for reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

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

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

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

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

23. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** during the first quarter of FY 1992 through 1995 unless otherwise specified by the Commission. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. If the Commission is unable to publish a notice during the first quarter of Fiscal Years 1992–1995, quarterly payments of the annual fees of $100,000 or more shall continue and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until such time as a notice concerning the revised amount of the fees for the fiscal year is published by the Commission.

24. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

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

(b) A base annual fee will be established for each operating power reactor. The calculated fee is based on the sum of NRC budgeted costs for each FY for the following:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 20 of this chapter, or operating the Incident Response Center.

The base FY 1991 annual fees for each operating power reactor subject to fees under this section and due before September 30, 1991, are shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor. The amount of the surcharge is the sum of NRC budgeted costs for each FY for the following:

(i) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other Government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; approximately 60 percent of the low level waste disposal generic activities; uranium enrichment generic activities; and

(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act. Reviews of standard reactor design applications and export and import licenses are included in this category for FY 1991 only.

(2) The FY 1991 surcharge to be added to each operating power reactor is $259,000. This amount is calculated by dividing the total cost for these activities ($28.2 million) by the number of operating power reactors (109).

(d) The FY 1991 part 171 annual fees for operating power reactors and are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in millions]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2.658	$.259	$2.917	$20.4
Combustion Eng	15	2.658	.259	2.917	43.8
GE Mark I	24	2.648	.259	2.907	69.8
GE Mark II	8	2.664	.259	2.923	23.4
GE Mark III	4	2.873	.259	3.132	12.5

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]—Continued

[Fees in millions]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Westinghouse	51	2.673	.259	2.932	149.5
Totals	109				$319.4

[1] Fees assessed by reactor vendor will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter except for those reactors exempted from fees under § 171.11(a), are as follows: Research reactor: $50,000, Test reactor: $50,000.

(f) For FY 1992 through 1995 annual fees for operating reactors will be calculated and assessed in accordance with § 171.13 of this section.

25. Section 171.16 is added to read as follows:

§ 171.16 Annual Fees: Material 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) Person(s) who conduct activities authorized under

(1) 10 CFR part 30 for byproduct material;

(2) 10 CFR part 40 for source material, and

(3) 10 CFR part 70 for special nuclear material,

(4) 10 CFR part 71 for packaging and transportation of radioactive material, and

(5) 10 CFR part 72 for independent storage of spent nuclear fuel and high level waste:

shall pay an annual fee for each license, certificate, approval or registration the person(s) holds on the date the annual fee is due. If a person holds more than one license, certificate, registration or approval, the annual fee will be the cumulative total of the annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

(b) The basis for the annual fee is the sum of NRC budgeted costs for each FY for those

(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 directly associated with plant-specific licensing and inspections 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, the licensee may pay the reduced annual fee for FY 1991 of $1,800 established for a small entity for each fee category. For each category, a materials licensee would pay the annual fee (base annual fee plus the surcharge) or $1,800, whichever is less.

(1) A licensee qualifies as a small entity if it meets the following size standards which were established by the NRC for its licensees on December 9, 1985 (50 FR 50241).

(i) For all NRC licensees except private practice physicians and educational institutions the size standard is $3.5 million or less in annual gross receipts.

(ii) For private practice physicians, the size standard is $1 million or less in annual gross receipts.

(iii) For educational institutions, the size standard is divided into two categories.

(A) State or publicly supported institutions supported by jurisdictions of over 50,000 population are large entities.

(B) Educational institutions that are not State or publicly supported and have fewer than 500 employees are small entities.

(iv) A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

(2) A licensee who seeks to establish status as a small entity for purposes of paying the annual fees required under this section shall file a certification statement with the Commission. The licensee shall file the required certification on NRC Form 526 for each license under which it is billed. The NRC shall include a copy of Form NRC 526 with each annual fee invoice sent to a licensee for purposes of billing under this section. A licensee who seeks to qualify as a small entity shall submit the completed NRC Form 526 with the reduced annual fee payment.

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

(4) The maximum annual fee (base annual fee plus surcharge) a small entity is required to pay for FY 1991 is $1,800 for each category applicable to the license(s).

(d) The FY 1991 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

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

[See footnotes at end of table]

Category of materials licenses			Annual Fees[1 2 3]
1. Special nuclear material:			
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.			
	License No.	Docket No.	
High Enriched Fuel:			
Babcock and Wilcox	SNM-42	70-27	$1,500,000
Nuclear Fuel Services	SNM-124	70-143	1,500,000
United Nuclear Corp.	SNM-368	70-371	1,500,000
Low Enriched Fuel:			
Advanced Nuclear Fuels	SNM-1227	70-1257	693,000
B&W Fuel Company	SNM-1168	70-1201	693,000
Combustion Engineering (Hematite)	SNM-33	70-36	693,000
Combustion Engineering (Windsor)	SNM-1067	70-1100	693,000
General Electric Company	SNM-1097	70-1113	693,000
Westinghouse Electric Co.	SNM-1107	70-1151	693,000
Surcharge			$143,500
A. (2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form			100,000
Surcharge			35,900
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)			375,000
Surcharge			1,500
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			1,100
Surcharge			100
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)			1,600
Surcharge			1,500
2 Source material:			
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			540,000
Surcharge			143,500
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.			
Class I facilities [4]			100,000
Other facilities			67,000
Surcharge			100
B. Licenses which authorize only the possession, use and installation of source material for shielding			290
Surcharge			100
C. All other source material licenses			2,000
Surcharge			1,500
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			6,300
Surcharge			1,500
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			3,000
Surcharge			1,500
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			7,200
Surcharge			1,500
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			2,600
Surcharge			100
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)			1,200
Surcharge			100
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			2,500
Surcharge			100
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			10,700
Surcharge			100
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter			4,300
Surcharge			100

I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,100
Surcharge	100
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	5,100
Surcharge	100
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	4,000
Surcharge	100
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	4,800
Surcharge	1,500
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	2,500
Surcharge	1,500
N. Licenses that authorize services for other licenses, except (1) licenses that authorize calibration and/or leak testing services only 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	2,900
Surcharge	1,500
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	7,800
Surcharge	100
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,400
Surcharge	100
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	[5] 56,700
Surcharge	35,900
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	9,200
Surcharge	1,500
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	5,100
Surcharge	1,500
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	6,900
Surcharge	100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	10,000
Surcharge	1,500
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	3,300
Surcharge	1,500
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	9,600
Surcharge	100
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	8,400
Surcharge	1,500
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	3,400
Surcharge	100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,300
Surcharge	100
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	6,100
Surcharge	100
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	3,100
Surcharge	100
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	1,300
Surcharge	100
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	660
Surcharge	100
10 Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High Level Waste and plutonium air packages	[6] N/A
Other Casks	[6] N/A

B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	29,000
Users	1,700
Surcharge	100
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	375,000
Surcharge	100
14. Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17 Master materials licenses of broad scope issued to Government agencies	200,000
Surcharge	22,500
18. DOE Certificates of Compliance	[10] 1,200,000

[1] Amendments based on applications filed within FY 1992 through 1995 after the applicable date of the annual fee published in the FEDERAL REGISTER notice pursuant to § 171.13 for each fiscal year that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee for that fiscal year or any portion thereof for the fiscal year filed. The annual fee will be waived where the license is terminated prior to the applicable date of the annual fee published in the FEDERAL REGISTER for each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to the applicable date of the annual fee published in the FEDERAL REGISTER, for each fiscal year. If a person holds more than one license, certificate, registration, or approval, the annual fee will be the cumulative total of the annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

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

[3] For FYs 1992 through 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 of this part and this section and will be published as a Notice in the FEDERAL REGISTER.

[4] A Class I license includes mills in operation or standby, mills with reclamation plans under review and commercial in-situ leach facilities.

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

[6] Standardized spent fuel facilities, 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 such 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 operating.

[8] No annual fee is charged because it is not practical to develop an equitable and fair fee 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 all Certificates of Compliance issued to DOE.

(e) A surcharge has been added to each category, except Category 18, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $143,400 has been added to fee Categories 1.A.(1) and 2.A.(1); an additional charge of $35,800 has been added to fee categories 1.A.(2) and 4.A.; an additional charge of $1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of $22,500 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $100 has been added to each fee Category, except Categories 10.A., 11., 12., 13.A., 14., 15., 16., 17., and 18. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $100 additional charge.

26. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

The annual fee for a power reactor licensee that is subject to fees under this part that is granted a license to operate after October 1 of a FY shall be prorated on the basis of the number of days remaining in that FY. Thereafter, the full fee would be due and payable each subsequent FY. Licenses revoked, suspended, or for which the licensee has requested amendment to permanently withdraw operating authority during the FY will not result in any refund of the annual fee or any portion thereof. Any holder of a materials license, a Certificate of Compliance, a sealed source and device registration, or an approval of a QA program issued after October 1 of FYs 1992 through 1995 will be assessed an annual fee in the subsequent fiscal year.

27. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Fee payments shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Federal agencies may also make payment by either Standard Form SF–1081 (Voucher and Schedule of Withdrawals and Credits) or by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the bills to applicants or licensees, payment should be made accordingly, e.g., bills of $5,000 or more will normally indicate payment by electronic fund transfer.

(b) For FY 1991, the Commission will adjust the fourth quarterly bill for operating power reactors to recover the full amount of the revised annual fee. All other licensees, or holders of a certificate, registration, and approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of this rule and interest shall accrue from the effective date of this rule. However, interest will be waived if payment is received within 30 days from the effective date of this rule.

(c) For FYs 1992 through 1995, annual fees in the amount of $100,000 or more and described in the Federal Register Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1 and July 1 of each FY. Annual fees of less than $100,000 shall be paid once a year during the first quarter of the FY as billed by the Commission. For FY 1992 only, the NRC will defer issuing the first quarterly bills for annual fees greater than $100,000 or bills for annual fees less than $100,000 until December 1991.

28. § 171.23 is revised to read as follows:

§ 171.23 Enforcement.

If any person required to pay the annual fee fails to pay when the fee is due, or files a false certification with respect to qualifying as a small entity under the Regulatory Flexibility Criteria, the Commission may refuse to process any application submitted by or on behalf of the person with respect to any license issued to the person and may suspend or revoke any licenses held by the person. The filing of a false certification to qualify as a small entity under § 171.16(c) of this part may also result in punitive action pursuant to 18 U.S.C. 1001.

29. § 171.25 is revised to read as follows:

§ 171.25 Collection, interest, penalties, and administrative costs.

All annual fees in §§ 171.15 and 171.16 will be collected pursuant to the procedures of 10 CFR part 15. Interest, penalties and administrative costs for late payments will be assessed in accordance with 10 CFR part 15, of this chapter, 4 CFR part 102, and other relevant regulations of the United States Government, as appropriate. In the event a quarterly installment is not made by the appropriate due date specified in § 171.19, the full fee becomes due and payable, with interest, penalties, and administrative costs of collection calculated from the date that quarterly installment was due.

Dated at Rockville, Maryland this 28th day of June, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

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)

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

I. Background

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

To assist in the consideration of impacts under the Regulatory Flexibility Act, the NRC has adopted size standards for determining which NRC licensees qualify as small entities (December 9, 1985; 50 FR 50241). These size standards are as follows:

(1) For all NRC licensees, except physicians in private practice and educational institutions, the size standard is $3.5 million or less in annual gross receipts.

(2) For physicians in private practice, the size standard is $1 million or less in annual gross receipts.

(3) For educational institutions, the size standard is divided into two categories:

(i) State or publicly supported educational institutions supported by jurisdictions with a population of 50,000 or less are defined as small entities.

(ii) Educational institutions that are not State or publicly supported and have 500 or fewer employees are small entities.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. Thus, the NRC must collect approximately $445 million through these fees for FY 1991 by September 30, 1991.

To comply with Public Law 101–508, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171. Consistent with the Conference Report accompanying the Public Law, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities.

II. Impact on Small Entities

Based on previous surveys and the comments received on the proposed fee rule revisions, NRC licensees that meet the size standard for a small entity are primarily those licensed under the agency's materials program. Therefore, this analysis will focus on the economic impact on materials licensees.

The amendments to the Commission's fee regulations would result in a substantial increase in the fees currently charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these material licensees, the NRC estimates that approximately 35 percent (about 3,000 licensees) would qualify as a small entity. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed rule. Comments were specifically requested on (1) how the proposed regulations would affect each class of licensee, and (2) how the regulations could be structured to further minimize the economic impact on the licensee, but still meet the statutory mandate of Public Law 101–508.

For materials licensees, the increase in fees consists of (1) an increase of 25 percent in the license and inspection fees currently assessed under 10 CFR part 170, and (2) a new annual fee assessed under 10 CFR part 171 that ranges from $290 to over $10,000. A number of small entities indicated in their comments that the 25 percent increases in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many of the materials licensees commented on the negative economic impact of the new annual fee. Therefore, this regulatory flexibility analysis will concentrate on the new annual fee.

The commenters indicated the following results if the proposed annual fee was not modified:

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

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

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

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

Although it is not clear to what extent these effects would materialize if the proposed fees are assessed, it is clear that the proposed fees would be a relatively high portion of the gross revenues of some licensees and far less a portion for large material licensees. Therefore, the NRC concludes that alternatives, in accordance with the Regulatory Flexibility Act, should be considered because of the significant impact on a substantial number of small entities.

III. Alternatives

The commenters' suggested alternatives to reduce the impact on small entities are categorized as follows:

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

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

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

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the Regulatory Flexibility Act to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under part 170. Therefore, this approach was rejected.

For reasons similar to those for which NRC rejected the first alternative, basing the fee on the frequency of use of the licensed radioactive source, the second alternative, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modification of the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

1. Exempt all small entities that meet the size standards from annual fees.
2. Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.
3. Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. This could be viewed as not being consistent with the objectives of Public Law 101-508, because small entities would not pay any of the generic costs attributable to their class of licensees. This would result in the annual fees attributable to small entities being totally paid by other NRC licensees.

Under Option 2, the small entities would pay a percent (e.g. 50 percent) of the proposed fee for each specific category of material license, regardless of how small or large the fee is. This could lead to a reduction in annual fees that are already relatively small and do not have a significant impact on a substantial number of small entities. On the other hand, for fee categories with large annual fees, the percentage of reduction may result in assessing relatively large fees for small entities licensed under those fee categories.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay the smaller of the annual fee for the category or the maximum small entity fee. This alternative would strike a balance between the requirements of Public Law 101-508 and the Regulatory Flexibility Act, which is to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities.

IV. Maximum Fee

To implement Option 3, the NRC must establish a maximum small entity fee. The Regulatory Flexibility Act and implementing guidance do not provide specific guidance on the amount or the percent of gross receipts that should be charged to a small entity. To determine a maximum annual fee for a small entity, the NRC examined the current NRC 10 CFR part 170 license and inspection fees and Agreement State fees for those fee categories which are expected to have a substantial number of small entities. Because these fees are currently charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the existing rule, that the existing materials license fees do not have a significant impact on small entities.

The maximum fees per year that are currently charged by several Agreement States and the NRC for materials license fee categories with a significant number of small entities are shown below.

	Current maximum average total fee per year
Washington	$3,760
Texas	2,100
Illinois	2,000
NRC	1,590
Nebraska	1,460
New York	1,030
Utah	440

Table 1 shows the estimated total fees (part 170 plus part 171) for materials licensees, assuming maximum annual fees for small entities of $2,000 or $1,500 and an average number of licensing actions and inspections per year. If the maximum annual fee for small entities is established at $2,000, the average fee per year for all of the categories would be below the approximately $3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad scope medical licensees. The broad scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a $2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately $3,800. If the maximum fee is reduced by $200 (from $2,000 to $1,800), then all categories of material licensees, including radiographers, would pay no more for each category than the current maximum fee of about $3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, would pay for most of the costs ($22.3 million of the total $27.2 million) attributable to them. For the above reasons, the NRC has established the maximum annual fee (base annual fee plus surcharge) for small entities at $1,800 for each fee category covered by each license issued to a small entity. This will reduce the impact on many small entities. Note that the costs ($4.9 million) not recovered from small entities would be allocated to other material licensees and to operating power reactors.

V. Summary

Comments received on the proposed rule provided additional evidence that the proposed rule would 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 requirements to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum fee of $1,800 would reduce the impact on small entities and, at the same time, the reduced fee would be consistent with the objectives of Public Law 101-508.

TABLE 1.—AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

License fee category	Total small entity fee *	
	Max annual fee=$2K	Max annual fee=$1.5K
Special Nuclear Material (SNM):		
1C. Industrial Gages	$1,672	$1,672
1D. All Other SNM	2,506	2,006
Source Material:		
2B. Shielding	463	463
2C. Other Source Materials	2,867	2,367
Byproduct Material:		
3A. Manufacturing—Broad	3,560	3,060
3B. Manufacturing—Other	3,343	2,843
3C. Radiopharmaceuticals	3,207	2,707
3D. Radiopharmaceuticals—Manufacturing	2,677	2,177
3E. Irradiators—Self-Shield	1,699	1,699
3F. Irradiators—<10,000 Ci	2,623	2,123
3G. Irradiators—>10,000 Ci	3,840	3,340
3H. Exempt Distribution—Device Review	2,815	2,315
3I. Exempt Distribution—No Device Review	2,682	2,182
3J. Gen. License—Device Review	2,679	2,179
3K. Gen. License—No Device Review	2,708	2,208
3L. R&D—Broad	3,210	2,710
3M. R&D—Other	3,050	2,550
3N. Service License	2,733	2,233
3O. Radiography	4,050	3,550
3P. All Other Byproduct Materials	2,120	2,120
Waste Disposal and Processing:		
4B. Waste Receipt/Packaging	4,680	4,180

TABLE 1.—AVERAGE TOTAL SMALL ENTITY FEES PER YEAR—Continued

License fee category	Total small entity fee *	
	Max annual fee=$2K	Max annual fee=$1.5K
4C. Waste Receipt—Prepackaged	3,216	2,716
Well Logging:		
5A. Well Logging	3,207	2,707
Nuclear Laundry:		
6A. Nuclear Laundry	3,030	2,530
Human Use of Byproduct, Source, or SNM:		
7A. Teletherapy	3,788	3,288
7B. Medical—Broad	4,360	3,860
7C. Medical Other	3,130	2,630
Civil Defense:		
8A. Civil Defense	1,789	1,789
Device, Product, or Sealed Source Safety Evaluation:		
9A. Device/Product—Broad	3,200	2,700
9B. Device/Product—Other	2,580	2,080
9C. Sealed Sources—Broad	1,530	1,530
9D. Sealed Sources—Other	770	770

* Based on average 10 CFR part 170 fees plus maximum annual fee.

[FR Doc. 91-15935 Filed 7-9-91; 8:45 am]

BILLING CODE 7590-01-M