

# Presidential Documents

Title 3—

Proclamation 6706 of July 15, 1994

The President

Captive Nations Week, 1994

By the President of the United States of America

## A Proclamation

This year marks the 35th commemoration of "Captive Nations Week," our national expression of support for the people of the world who continue to suffer the yoke of oppressive governments. Freedom has made great strides in recent years, thanks to the quiet heroism of countless men and women. Yet far too many members of the human family still live in the shadows, shackled and intimidated in regimes of fear, and we must keep faith with them.

For over 200 years, this Nation has worked to realize the vision of freedom articulated by our founders, and before them by thinkers throughout the ages. Our commitment to the eternally-unfolding meaning and spirit of liberty expresses not only our most cherished values, but also our best hope for long-term international stability.

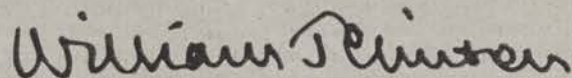
Freedom is a work in process. The people of the former Soviet bloc are making the arduous transition to free societies and free markets, and we will endeavor to support them as best we can. Less outwardly dramatic, but no less moving, are the democratic transitions that have taken place in Asia, Africa, and Latin America, and there too, we will do what we can.

But great numbers of men and women are still not free. Authoritarianism still wields an iron grip over the lives of millions. And in this new time we are confronted by the alarming specter of racial, ethnic, and religious animosities and violence. It is thus all the more reason for us to recommit ourselves to the work of promoting respect for universal human rights and for political freedom for people of all races, creeds, and nationalities the world over.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 17 through July 23, 1994, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and in so doing to rededicate ourselves to the principles of freedom and justice on which this Nation was founded and by which we will endure.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.



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# Rules and Regulations

Federal Register

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Wednesday, July 20, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 170 and 171

RIN: 3150-AF03

#### Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101-508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately \$513 million.

**EFFECTIVE DATE:** August 19, 1994.

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

**FOR FURTHER INFORMATION CONTACT:** C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-6213.

#### SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Responses to Comments.
- III. Final Action—Changes Included In The Final Rule.
- IV. Section-by-Section Analysis.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.

#### IX. Backfit Analysis.

#### I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

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

Subsequent to enactment of OBRA-90, the NRC published six final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the *Federal Register* that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR Part 170 hourly rate and fees and the 10 CFR Part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on those challenges on March 16, 1993, in *Allied-Signal v. NRC*, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the *Federal Register* two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 lowered in some cases the maximum annual fee of \$1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of \$400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), the NRC published final rules in the *Federal Register* that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992 and FY 1993 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669-72). In brief, the NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. In response to the March 16, 1993, judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided



in nonprofit institutions. The Commission denied that request on March 17, 1994 (59 FR 12555).

Section 2903(c) of the Energy Policy Act of 1992 required the NRC to undertake a broad review of its annual fee policies under Section 6101(c) of OBRA-90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC found were needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC reviewed more than 500 public comments submitted in response to the request for comment published in the *Federal Register* on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room.

On May 10, 1994 (59 FR 24065), the NRC published its proposed rule for FY 1994 establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1994, less the appropriation received from the NWF. The basic approach, policies, and methodology used in the proposed rule were unchanged from those used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31477), July 23, 1992 (57 FR 322691), and July 20, 1993 (58 FR 38666), with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licensees that they support. Because this direct assignment results in a reduction of overhead costs allocated to each FTE, the cost per FTE is about 3 percent less than it would have been without the additional direct assignment.

On May 19, 1994 (59 FR 26097) the NRC amended its fee regulations in 10 CFR part 171 to establish revised FY 1991 and FY 1992 surcharges for NRC licensees. The revised surcharges reflect the revised method of allocating low-level waste (LLW) costs adopted by the Commission in the FY 1993 final fee rule published July 20, 1993 (58 FR

38666). Refunds/credits totalling \$2.2 million will be given to certain NRC materials licensees as a result of the revised surcharges for FY 1991 and FY 1992.

## II. Responses to Comments

The NRC received thirty-three comments on the proposed rule. Although the comment period ended on June 9, 1994, the NRC has reviewed and evaluated all comments received. Copies of all comment letters received are available for inspection in the NRC Public Document room, 2120 L Street, NW (lower level) Washington, DC.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

### A. Fee Legislation

1. *Comment.* Several commenters noted that NRC had completed its report on fee policy mandated by the Energy Policy Act of 1992 and had sent a report to Congress with legislative recommendations. They expressed their agreement with the legislative recommendation in the report that OBRA-90 be amended to relax the requirement to recover 100 percent of its budget and remove certain costs from the fee base, thereby eliminating many of the burdens they deem to be inequitable. They urged the NRC to work with Congress to modify OBRA-90 to make the assessment of fees more equitable across the board.

*Response.* The need for legislation is beyond the scope of this rulemaking proceeding. The NRC will continue to work with Congress on fee issues.

2. *Comment.* Several commenters stated that it is very important for the NRC to control its internal costs in order for the nuclear industry to be successful in reducing overall program costs. One commenter suggested that the NRC consider staff reductions and other management improvements to reduce budget needs based on a decline in the number of materials licensees.

Another commenter commended the NRC on its willingness and ability to hold the line on, and indeed reduce, its recoverable budget for FY 1994. While noting that the proposed FY 1994 annual fees for power reactors are lower than those assessed in FY 1993, commenters from utility licensees or their representatives believe that further reductions are possible, especially in the areas where power reactor licensees are required to unfairly subsidize cost recovery for activities that benefit all licensees or for activities that are

unrelated to the power reactor class of licensees. While encouraged by the recent recommendations for legislative changes made by the NRC to Congress in the report required by the Energy Policy Act of 1992, commenters recommended that NRC consider the following actions it can take now without waiting for legislative changes:

(1) Reduce costs by eliminating or deferring lower priority research and generic rulemaking activity;

(2) Reduce the amount to be collected under part 171 by increasing part 170 licensing and inspection fees;

(3) Raise the lower tier small entity fee; and

(4) Use an annual escalation, e.g., CPI or some equivalent index, of small entity fee limits which have stayed at \$400 and \$1,800 since they were set two years ago.

*Response.* The NRC is working to improve the internal efficiency and effectiveness of its program as a means of controlling operating costs and, therefore, keeping fees billed to licensees as low as practicable. Economies have been achieved through the elimination of the NRC's uranium recovery field office in Denver, Colorado and consolidating the agency's two smallest regional offices—Regions IV and V. The NRC is tightening its financial operations by increasing the effectiveness and efficiency of its program financing. As a result of these efforts, the NRC proposed and Congress approved a \$12.7 million rescission (reduction) to the original appropriation enacted for FY 1994. Therefore, the total amount to be recovered from fees from all classes of licensees in FY 1994 is about \$6 million less than the amount to be recovered in FY 1993.

The Chief Financial Officers Act (CFO) requires that the NRC conduct a biennial review of fees and other charges imposed by the Agency for its services and revise these charges to reflect the costs incurred in providing those services. The 10 CFR Part 170 licensing and inspection fees were increased significantly for some materials licenses in FY 1993 as a result of the first CFO biennial review. The 10 CFR Part 170 fees for FY 1995 will be revised to reflect the results of the second CFO review.

On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. This rule increased the receipts-based SBA size standards due to inflation. The NRC is considering proposing amendments to the NRC size standards that would reflect the SBA action. Any amendments to the NRC size standards will be submitted to SBA



for approval and published in the *Federal Register* for public notice and comment as required by the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102-366). The NRC will reexamine the annual fees assessed for small entities once the NRC completes its evaluation of the NRC size standards, which is expected to be done in FY 1995.

The NRC in this final FY 1994 fee rule is continuing a maximum annual fee of \$1,800 and \$400 per licensed category, respectively, for those licensees who can qualify as small entities under NRC size standards. The impact of the fees for FY 1994 on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A of this final rule). The small entity subsidy in this final fee rule has been calculated on that basis.

## B. Fee Methodology

### 1. Hourly Rate

*Comment.* Several commenters indicated that the hourly rate of \$133 is excessive and cannot be justified. These commenters noted that the rate is considerably higher than the typical industry charge-out rate for direct employees and equals or exceeds the hourly charges for senior consultants at major national consulting organizations. Other commenters supported the proposed removal of costs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste from overhead and their direct assignment to the reactor and materials programs. Commenters stated that this is an improvement in that it better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided.

*Response.* As indicated in previous final rules, the NRC professional hourly rate is established to recover approximately 100 percent of the agency's Congressionally approved budget, less the appropriation from the NWF, as required by OBRA-90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of \$133 for FY 1994 are discussed in detail in Part III, Section-by-Section Analysis, for § 170.20 of the proposed rule (59 FR 24069; May 10, 1994) and the same section of this final rule. For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1994 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) that

must be recovered through fees assessed for the hours expended by the direct FTEs. As indicated in the proposed rule and supported by the commenters, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead but are now directly assigned to the class of licensees they support. This change results in the increase in the hourly rate being less than it would have been otherwise. Given the increase in the costs to be recovered through the hourly rate, including increases in the cost of doing business (e.g., inflation), it is necessary to increase the 1994 hourly rate by less than one percent to recover 100 percent of the budget as required by OBRA-90. The specific details regarding the budget for FY 1994 are documented in the NRC's publication "Budget Estimates, Fiscal Year 1994" (NUREG-1100, Volume 9). Copies of NUREG-1100, Vol. 9 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555-0001.

### 2. Fees Based on Other Factors

*Comment.* As in FYs 1991-1993, commenters indicated that NRC should assess fees based on the amount or type of material possessed, the number of radioactive sources, the sales generated by the licensed location, the competitive condition of certain markets and the effect of fees on domestic and foreign competition.

*Response.* The issues of basing fees on the amount of material possessed, the frequency of use of the material, the size of the facilities, and market competitive positions, was addressed by the NRC in previous rules and in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). The NRC did not adopt that approach because it would require licensees to submit large amounts of new data and would require additional NRC staff to evaluate the data submitted and to develop and administer even more complex fee schedules. The NRC continues to believe that uniformly allocating the

generic and other regulatory costs to the specific licensee within a class to determine the amount of the annual fee is a fair, equitable, and practical way to recover those costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993, decision in *Allied-Signal*.

### 3. High-Level Waste

*Comment.* One commenter stated that the Department of Energy (DOE) should pay, through user fees, for NRC's costs related to DOE's high-level waste (HLW) activities at Yucca Mountain.

*Response.* All of NRC's direct costs related to the disposal of civilian high-level waste in DOE's geologic repository are paid for with funds appropriated from the Nuclear Waste Fund (NWF). For FY 1994, the budgeted amount appropriated to the NRC from the NWF is about \$22 million. The amount appropriated from the NWF is subtracted from the total NRC appropriation, and is therefore not included in the fee base. This is shown in Table I. Thus, no NRC fees are assessed to recover the direct HLW costs.

## C. Specific Fee Issues—Part 170

### 1. Fees for Special Projects.

*Comment.* Several commenters supported the proposed change in 10 CFR part 170 special project fees whereby the definition would be revised to indicate that 10 CFR part 170 fees will not be assessed for certain reports submitted to the NRC. Rather, commenters point out these costs are more appropriately assessed as 10 CFR part 171 annual fees because the related activities are in support of generic efforts such as development of regulatory guidance applicable to a class of licensees. One commenter, while supporting the proposed change, stated that the terms "alternate method", "reanalysis", and "unreviewed safety issue" are imprecise and should be further defined or explained. Another commenter requested that the NRC reinstate a fee ceiling for topical report reviews. The commenter indicated that a fee ceiling would encourage the submittal of topical reports and contribute to the advance of the state-of-the-art in the nuclear industry and resultant improvement in nuclear plant safety.

*Response.* The NRC has revised the definition of special projects as



provided in § 170.3 of the regulations to indicate that 10 CFR part 170 fees will not be assessed for certain requests/reports. Based on a commenter's suggestion, the terms "alternate method", "reanalysis", and "unreviewed safety issue" have been further explained in section IV, Section-by-Section Analysis.

The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement 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 reports reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy that was required by EPA-92. The policy of assessing 10 CFR part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

## 2. Fees for Reciprocity

*Comment.* The NRC charges Agreement State licensees who provide services in non-Agreement States, "reciprocity fees". A few commenters indicated that they were opposed to the fees for reciprocity, particularly the proposed fees for revisions to information submitted on the NRC Form-241 filed by 10 CFR 150.20 general licensees. They stated that fees are an unnecessary burden and suggested that the NRC reconsider its decision to increase the current fees and add additional charges for reciprocity licensees. They stated that these costs would have to be included in proposals for work in non-Agreement States and that, as small firms, they could not absorb such costs and remain competitive with larger firms offering similar services. One commenter suggested that the fee for revisions to NRC Form 241 be established at \$25 to \$50 per revision rather than \$200 as proposed. Commenters questioned whether the establishment of the reciprocity fees is an effort to restrict survey activities to the home-State of the company because the additional costs do not make it feasible to even consider bidding for projects out of the state. Commenters claimed that this allows larger, wealthier companies the opportunity to bid for and secure out-of-state work. Other commenters

supported the reciprocity fees, including the proposed fees for revisions. They encouraged NRC to assess fees for services provided specific classes of licensees and to reduce the costs classified as overhead.

*Response.* The NRC is adopting the approach contained in the proposed rule as this is consistent with the Congressional mandate that, to the extent practicable, a class of licensees bear the costs of providing regulatory services to them. Other approaches suggested by commenters would have the effect of shifting the costs of reviewing revisions to Form 241 to other classes of licensees. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State. Information submitted to the NRC by the 10 CFR 150.20 general licensee that clarifies or deletes specific locations or work sites, work site contacts, or dates of work is considered by the NRC to be a clarification, not a revision. Changes in the equipment to be used under the 10 CFR 150.20 general license do not require a revision if there is no change in (1) activity to be conducted, (2) the radioactive material to be used, and (3) if the Agreement State license authorizes the new equipment.

The fee of \$700 for the initial filing of Form-241 is the same as that assessed in FY 1993. The fee of \$200 for revisions to the Form-241 has been added to this final rule. The reciprocity fees established by the NRC are not intended to restrict companies from doing work in non-Agreement States. The fees will allow the NRC to recover the costs it expends in reviewing initial applications and revisions filed by 10 CFR part 150.20 general licensees. That is, the fee is intended to recover the cost of identifiable services to a specific applicant in accordance with OBRA-90 and the IOAA. Fee Category 16 of 10 CFR part 170.31 has been revised to add a fee of \$200 for each revision filed by Agreement State licensees. The revision fee will be due at the time the applicant files a revision to information submitted on the initial Form-241 with the NRC.

## 3. Fees for Irradiators

*Comment.* One commenter indicated that underwater irradiators should not be placed, for fee purposes, in fee Categories 3F and 3G, the same category as "panoramic" or "cell" type irradiators, because the amount of regulation pertaining to unshielded source irradiators is much greater than that which applies to underwater irradiators. The commenter believes the license should be classified as Category 3E, a self-shielded irradiator. The commenter states that the relative complexity of the two designs dictates that this be the case. Therefore, licensing, inspection, and other NRC activities dealing with underwater irradiators must consume much less time and effort compared to their "cell" or "panoramic" counterparts.

*Response.* The Commission will continue to place underwater irradiators in fee Categories 3F and 3G. Although the sources are not removed from their shielding for irradiator purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators and possession limits of thousands of curies are authorized in the license. As a result, more regulatory effort is required to regulate underwater irradiators than is required to regulate the small irradiators in fee Category 3E. For example, the provisions of 10 CFR part 36 apply the same requirements to both the underwater irradiators where the source is not exposed for irradiation and the exposed source irradiators. The average cost of conducting license reviews and performing inspection of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where the source is exposed during irradiation.

## D. Specific Fee Issues—Part 171

### 1. Exemption From Fees for State-Owned Reactors.

*Comment.* Several commenters supported the proposed exemption from annual fees for State-owned research reactors. These commenters indicated that the reactors are used primarily for educational training and academic research purposes and contribute significantly to the national research effort and thereby provide significant externalized benefits to society.

*Response.* The NRC, in this final rule, will amend both §§ 170.11(a) and 171.11(a)(2) to provide that State-owned research reactors used primarily for educational training and academic research purposes will be exempt from



fees. The proposed rule would have amended only 10 CFR part 171. The NRC believes that both of these changes are consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes.

## 2. Annual Fee for Uranium Recovery Facilities

**Comment.** While supporting the NRC's proposed first-time assessment of a \$1.5 million annual fee to the Department of Energy (DOE) for Uranium Mill Tailing Control Act (UMTCA) activities, several commenters strongly objected to the proposed annual fees for uranium recovery licensees. They agree that the NRC should be reimbursed by the collection of reasonable fees commensurate with services provided but indicated that the proposed fees are not equitable or reasonable and have not been implemented in a fair and equitable manner. They believe that the Class I fees for mill licensees are entirely disproportionate to the degree of NRC's involvement with the uranium recovery sites. Commenters indicated that the large increases in fees for FY 1994 (approximately \$36,000 per mill) demonstrate again the inconsistent and fluctuating nature of the NRC fee system. These licensees asserted that they have no means of anticipating or budgeting for the fees and therefore large increases are unacceptable. One commenter stated that the NRC's argument that the fees have increased because the initial licensing of Envirocare's 11.e(2) facility is complete is irrelevant and without merit because Envirocare's license is a Class 4D byproduct disposal facility and not a uranium recovery license. Commenters note that while the amount to be recovered from uranium recovery licenses was \$465,000 for FY 1993, the amount to be recovered for FY 1994 increased to \$2.1 million—a 350 percent increase. Commenters state that regulatory services to the industry have not increased from FY 1993 to FY 1994. Commenters find this situation particularly troubling as they believe the costs for uranium recovery facilities should have decreased with the closure of the Uranium Recovery Field Office (URFO) in Denver, Colorado, which was described by NRC "as a cost reduction measure to uranium recovery licensees".

One commenter argues that the annual fee of \$8,700 for a Category 4D

license is not justified when one considers the fee of \$94,300 for a mill license, a difference of \$85,600. The commenter states that this disparity is so great that it cannot be explained as anything short of arbitrary and capricious. The commenter asserted that to be equitable, Category 4D licenses should be assessed the same fees as a mill in fee Category 2.A.(1), Class I, because commercial byproduct disposal sites are analogous to uranium recovery tailings impoundments and essentially require the same regulatory oversight.

One commenter was concerned that the new fees collected from DOE will not be used to decrease the fees placed on other uranium recovery licensees.

**Response.** Contrary to the commenter's claim, the total budget authority to be recovered through fees from Title II uranium recovery licensees has decreased over the past two years. The following table shows the NRC budget authority for Title II uranium recovery licensees for FY 1992, FY 1993, and FY 1994.

| Title II facilities             | Dollars in thousands |         |         |
|---------------------------------|----------------------|---------|---------|
|                                 | FY 1992              | FY 1993 | FY 1994 |
| Total Budget Authority ..       | \$3,668              | \$3,065 | \$2,839 |
| Less 10 CFR Part 170 Fees ..... | -1,700               | -2,600  | -2,200  |
| Total Annual Fees ..            | 1,968                | 465     | 639     |

As shown above, the NRC total budget authority for commercial uranium recovery licensees has steadily decreased from \$3,668,000 in FY 1992 to \$2,839,000 in FY 1994, a 23 percent decrease since FY 1992. However, because of the relatively large collection of 10 CFR Part 170 fees in FY 1993 as a result of the NRC licensing review efforts associated with the Envirocare license application, the FY 1993 amount of \$465,000 to be collected through annual fees is \$174,000 less than the FY 1994 annual fee amount of \$639,000. In FY 1993, the NRC estimated that approximately \$2.6 million would be collected from 10 CFR 170 fees, including fees for the major review work for the Envirocare 11.e(2) license. The Envirocare license was issued on November 19, 1993. Therefore, the 10 CFR Part 170 fees estimated to be collected in FY 1994 have decreased.

Another reason for the increase in FY 1994 annual fees for commercial uranium recovery licensees is a reduction in the number of licensees. In

FY 1993 there were 14 uranium recovery licensees subject to annual fees, compared with 12 licensees in FY 1994. This is a decrease of 2 licensees (or 14 percent). Because costs are allocated to a class of licensees, any terminations that occur within the class will raise the annual fees for the remaining licensees within that class in order for the NRC to collect approximately 100 percent of its budget in fees. The generic and other regulatory costs allocated to a class of licensees under 10 CFR Part 171 are not dependent on the number of licensees in a class.

While the total amount of annual fees to be recovered from all uranium recovery licensees, commercial (Title II) and DOE (Title I) is \$2.1 million in FY 1994, \$1.5 million of this amount is for DOE Uranium Mill Tailing Control Act (UMTRCA) activities. The \$1.5 million related to DOE UMTRCA activities is being paid by DOE in FY 1994, leaving the \$0.6 million to be paid by the commercial Title II facilities. The budget for DOE UMTRCA activities does not affect commercial uranium recovery license fees in FY 1994, nor did it affect their fees prior to FY 1994. As noted by the commenters, DOE is being assessed a \$1.5 million annual fee in FY 1994 (10 CFR 171.16(d), fee Category 18b). For FYs 1991–1993, the costs for DOE UMTRCA activities were assessed to operating power reactors as a surcharge because DOE was not an NRC licensee (10 CFR 171.15(c)(2)). In FY 1994, the costs for UMTRCA activities were moved from the power reactor class of licensees to the uranium recovery class because as of September 21, 1993, DOE became a general licensee of the NRC (10 CFR 40.27) because post-reclamation closure of the Spook, Wyoming site had been achieved. As a result, DOE will be billed for the costs (\$1.5 million in FY 1994) associated with NRC's UMTRCA review and all activities associated with the facilities assigned to DOE under UMTRCA.

The statement made by a commenter that fees collected from DOE will not be used to decrease NRC's license fees is not correct. The \$1.5 million to be collected from DOE will not be assessed to operating power reactors who have paid these costs since FY 1991. Therefore, the fees for operating power reactors will decrease as a result of the reallocation of costs.

Based on the comments regarding the annual fee for licenses authorizing the disposal of 11.e(2) byproduct material, the NRC has reexamined its allocation of the budget for Title II uranium recovery activities. Based on this reexamination and the comments



received, the NRC has concluded that the part of the budgeted costs for the uranium recovery class of licensees should be allocated to licensees that authorize receipt and disposal of 11e.(2) byproduct material, because some of these budgeted resources are used to regulate these licensees. Thus, the \$639,000 to be recovered in annual fees will be recovered from fee category 2.A.(2) Class I facilities, Class II facilities and Other facilities, plus licenses authorizing disposal of 11e.(2) byproduct material. Additionally, the Commission has determined that for licenses issued for the primary purpose of disposal of 11e.(2) byproduct material (e.g., the license issued to Envirocare in FY 1994) the annual fee should be 90 percent of the fee for a Class I mill. This is based on a determination that an estimated 90 percent of the budget for regulating Class I mills is related to the mill tailings and the remaining 10 percent to the processing of the ore. Therefore, since essentially the same regulations apply to the mill tailings generated by a Class I mill and the 11e.(2) byproduct material received by a licensee whose primary purpose is to dispose of 11e.(2) byproduct material, the annual fee for a licensee whose primary purpose is the disposal of 11e.(2) byproduct material should be the same as that portion (90 percent) of the annual fee for a Class I facility that is related to the mill tailings. The annual fee for non-operating mills that accept 11e.(2) byproduct material for disposal in tailings piles created by mill operations will not be changed, because such disposal is incidental to the existing tailings that were generated prior to elimination of the mill's authority to operate and the Commission's policy is not to assess an annual fee to non-operating facilities. As a result of the above changes the base annual fee for a Class I facility will be reduced from \$94,300 to \$74,500 for FY 1994. The annual fee for licenses with the primary purpose of disposal of 11e.(2) byproduct material will be \$67,000.

### 3. Annual Fee for Fuel Facilities

a. *Comment.* Two commenters objected to the proposed reclassification of General Atomics' (GA) special nuclear material license from one subclass to another. Commenters indicated that such a reclassification, with the attendant increase in annual fees, would have the further effect of forcing GA to shut down the manufacture of a limited number of TRIGA research reactor fuel elements, thereby eliminating any U.S. source for this type of reactor fuel. Commenters

argued that the licensee is not a "fuel facility" in the same sense as other fee Category 1.A.(1) licensees, in that all of the licensees in fee Category 1.A.(1) are large suppliers of light water reactor fuel to the commercial power industry or the U.S. Navy. Commenters stated that reclassifying the license is inconsistent with the NRC's stated underlying basis of charging a class of licensees for NRC costs attributable to that class of licensees particularly when one considers, for comparison purposes, the special nuclear material (SNM) throughput, facility size, employment numbers, complexity of processes, chemical/physical forms of SNM, and number of process steps. Commenters therefore concluded that the GA license should not be reclassified.

General Atomics, whose license is to be reclassified, commented that after three years of being classified as a fee Category 1.A.(2) licensee, there is no justification for suddenly reclassifying the license as a fee Category 1.A.(1) fuel facility, because there has been no change of any kind in the activities or licensing status since 1991 that would warrant reclassification of the facility. GA also contends that it is unfair to reclassify the license after the beginning of the fiscal year and to impose more than an eight-fold increase in the fee associated with the new category without the licensee having the opportunity to take licensing action to avoid the fee. GA states that when the initial rule for 100 percent recovery was published in FY 1991, the NRC recognized that many licensees might wish to avoid or minimize the fees by terminating or modifying their licenses, and for that reason provided a 30-day period before the effective date of the rule for a licensee to file a request to terminate the license or request a possession-only license and thereby avoid paying the annual fee. GA also stated that imposition of the proposed fee would force them to significantly raise its unit fuel prices to recover the eight-fold fee increase and that many of its customers for research reactor fuel are typically low-budget research facilities such as university research reactors, many of which are operated by nonprofit educational institutions.

*Response.* The NRC established fuel facilities as a separate class of licensees in FY 1991. Within the class, there are four subclasses of licensees described in 10 CFR 171.16(d): high-enriched uranium (HEU) fuel fabrication, low-enriched uranium (LEU) fuel fabrication, all other materials licenses authorizing critical quantities of special nuclear material, and UF<sub>6</sub> converters. One of the questions raised by the

commenters is whether GA license SNM-696 should be placed in the LEU fuel fabrication facility subclass (fee category 1.A.(1)) or the other facility subclass authorizing critical quantities of special nuclear material (fee category 1.A.(2)). Fee Category 1.A.(1) of 10 CFR 171.16(d) is intended to cover those licenses that authorize the possession and use of uranium 235 or plutonium for fuel fabrication activities. In the proposed rule for FY 1994, the NRC concluded that license SNM-696, held by GA, would be reclassified from fee Category 1.A.(2) (all other materials licenses authorizing critical quantities of special nuclear material) to fee Category 1.A.(1) (a low-enriched fuel fabrication facility). This reclassification is based on the fact that (1) the license authorizes the possession and use of uranium 235 for fuel fabrication activities and (2) GA manufactures TRIGA research reactor fuel elements using low-enriched fuel. As a result, the proper classification for license SNM-696 is fee category 1.A.(1) (low-enriched fuel fabrication). In the past, this license was improperly categorized by NRC and as a result, General Atomics was assessed substantially lower fees over the past three years than it should have been. Rather than continue using an incorrect fee classification for this license, now that the NRC is aware of its administrative error, this final rule places the license in its proper fee category. The NRC recently addressed a similar classification issue in response to a Babcock and Wilcox (B&W) request that their LEU fuel fabrication facility be reclassified from fee category 1.A.(1) (LEU facility) to fee category 1.A.(2) (all other materials licenses authorizing critical quantities of special nuclear material). On January 7, 1994, the NRC denied this request for reasons similar to those stated above for the General Atomics license.

The other question raised by the commenter is whether the fee for the GA license should be the same as the other LEU fuel fabrication licenses because their fuel and process is different. That is, would assessing GA the same fee as other LEU fuel fabrication licensees represent a disproportionate allocation of costs to GA. B&W has also raised similar questions relative to their LEU facility. The NRC is considering B&W's request for a partial exemption from annual fees under 10 CFR 171.11(d). This request is currently under review. Some of the comments received concerning the GA fuel facility are similar to the arguments presented by B&W for an exemption. GA states that "Reclassifying GA as a Category 1.A.(1)



licensee is inconsistent with the NRC's stated underlying basis of 'charging a class of licensees for NRC costs attributable to that class of licensees.' It asserts that by any measure of comparison, e.g., SNM \* \* \* complexity of processes, chemical/physical forms of SNM, number of process steps, etc., GA's licensed activities are nowhere close to being in the same class as the licensees listed in Category 1.A.(1). GA's \* \* \* licensed processes are simple small batch-wise operations, there are no processes involving solutions or powders (the fuel is a uranium-zirconium metal alloy), \* \* \*

The NRC believes that consideration of GA's comment as a request for an exemption under 10 CFR 171.11(d) is appropriate and supported by *Allied-Signal v. NRC*. The Court there indicated that they saw no reason to require the Commission to address rare situations in the rule itself, especially since 10 CFR Part 171 provides for exemptions in unusual circumstances. Therefore, the NRC intends to treat the unusual circumstances discussed in GA's comments as an exemption request, which it will address in the near future. The Commission notes, however, that the exemption determination will not be based on factors associated with size, ability to pay, or other economic factors. As stated in the decision to reinstate the exemption from annual fees for non-profit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). The NRC also addressed these issues in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511). The Commission indicated these generally are not factors it will consider in setting fees and finds no basis for altering its approach at this time.

Given the questions raised by B&W, GA, and other fuel facilities regarding exemptions from fees and proper fee category classification, the NRC plans to reexamine the fuel facility subclass categorizations. Any restructuring that results from this reexamination will be included in the proposed FY 1995 fee rule for notice and comment.

The NRC adopts General Atomics' suggestion that the NRC consider a waiver of the FY 1994 annual fees if, within the 30-day period after the NRC acts on their exemption request, it notifies the NRC in writing, in accordance with 10 CFR 70.38, that it wishes to relinquish the portion of their license permitting fabrication of fuel elements or to obtain a POL. In order to be considered for the waiver of the FY 1994 annual fee, General Atomics must

permanently cease fuel fabrication activities within the 30-day period after NRC acts on the exemption request.

With respect to the argument that reclassifying the license is inconsistent with the NRC's stated underlying basis of "charging a class of licensees for NRC costs attributable to that class of licensees", costs for providing an identifiable service related to a specific application, license or approval are recovered under the fee regulations in 10 CFR Part 170. For generic and other regulatory costs not recovered under 10 CFR 170, the NRC, in compliance with the requirements of OBRA-90, has allocated these costs to major classes of licensees. The law permits, and the NRC has established, a schedule of annual charges in 10 CFR Part 171 that assesses different annual charges to different licensees or classes of licensees. To the extent practicable, and where necessary for a more fair and equitable allocation of costs, a major class of licensees is divided into subclasses. Within a class or subclass of licensees, the costs are uniformly allocated to each licensee in the class or subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each licensee within a class or subclass. This approach and principle are used for all classes of licensees (57 FR 32693; July 23, 1992). The Commission has carefully reviewed the costs allocated to the LEU fuel fabrication subclass and concluded that the budgeted costs have been properly assigned to those licensees within the subclass.

b. *Comment.* Commenters also objected to the increases in annual fees for Category 1.A.(1) (low-enriched fuel facilities) and Category 1.A.(2), (other materials licenses authorizing critical quantities of special nuclear material). Commenters indicated that the base fee for low-enriched fuel facilities has increased from about \$700,000 in FY 1991 to \$1.4 million in FY 1994, while Category 1.A.(2) increased from about \$175,000 to \$304,000 (including surcharge). These increases, commenters claimed, place an undue hardship on the profitable operation of these facilities and are grossly out of proportion to any warranted increase in the effort expended by the NRC in regulating these classes of licensees. One commenter stated that the NRC's practice of retroactively revising annual fees causes major corporate budgeting problems, especially when large increases between the originally invoiced quarterly payments and actual annual fees are the result.

*Response.* The amount of the NRC's fees are based on the budget authority

for a class of licensees and do not consider impact on a company's profitability. The NRC budgeted costs for this class of licensees have increased because the NRC budgeted and the Congress appropriated greater resources to regulate the safety and safeguards of fuel facilities. Under the 100 percent recovery statute of OBRA-90, charging this class of licensees fees that fail to recover the full budgeted amount, would mean that other licensees must pay additional fees which provide no benefit to them. NRC promulgates its final rules as early as it can subject to certain time-sensitive constraints: the NRC must receive a Congressionally approved budget, calculate the numerous fees in question, issue a proposed rule for comment, evaluate the comments, and issue a final fee rule.

c. *Comment.* One commenter, Allied-Signal (A-S), believed that the costs allocated to the UF<sub>6</sub> conversion subclass should be divided equally between two licensees rather than one, even though the second licensee has a possession only license (POL). A-S argued that the NRC has not provided a rational basis for exempting that licensee from the annual fee. A-S noted the NRC's policy that it is the existence of a license, not operations, that determines allocation of costs for recovery through the annual fee. A-S believes that a licensee that has a license to operate but does not do so is no different from a licensee that has operated, stops doing so, and holds a POL. A-S believes that, in each case, the NRC's regulations are equally applicable and the licensee benefits from them. A-S pointed out that it is the only entity in the U.S. engaging in UF<sub>6</sub> conversion operations and although it has attempted to pass the cost of fees on to its customers, it has not been able to do so on a broad-scale basis. A-S claimed that the proposed fee would raise its costs by 6 cents per pound and that winning bids from Canadian and European UF<sub>6</sub> converters are decided by as little as 1 cent per pound of UF<sub>6</sub>.

A-S also argued that the UF<sub>6</sub> conversion license should be removed from the fuel facility class of licensees and included in the uranium recovery class because the operations of the UF<sub>6</sub> converter are more similar to those of a uranium mill than to a fuel facility. Additionally, there is now only one UF<sub>6</sub> converter in the U.S. and a subcategory of one does not accurately reflect the relevant amount of NRC's resources devoted to the license and for that reason is inappropriate. Therefore, according to Allied-Signal, the annual fee is not fairly and equitably allocated as required by OBRA-90, and does not bear a reasonable relationship to the



cost of providing regulatory services, also required by the statute. A-S, therefore, believes the resulting fee for UF<sub>6</sub> converters is disproportionately higher than that charged to licensees in the uranium recovery category and disproportionately close to what is assessed to operating reactors.

**Response.** The NRC has a long-standing policy of not assessing annual fees to those licensees who have indicated to the NRC that they wish to amend their license to permanently withdraw authority to operate and have been issued a possession only license (POL) (51 FR 33228; September 18, 1986). In FY 1991, the NRC reconsidered and reaffirmed its policy that licensees with POLs would not be subject to the annual fees when it initially established fees to recover 100 percent of its budget authority under OBRA-90 (56 FR 14873; April 12, 1991). Recently, the Commission revisited this issue as part of its fee policy review required by EPA-92, and affirmed its decision to continue the policy of not assessing annual fees to licensees when the license is amended to authorize possession only or decommissioning. This is consistent with the concept that those who benefit from a license that authorizes operation or use of material should pay annual fees. Therefore, consistent with agency policy included in the past fee rules, and the FY 1994 proposed fee rule, the NRC will not assess FY 1994 annual fees to Sequoyah Fuels Corporation, previously a UF<sub>6</sub> converter but now is not authorized to operate as a UF<sub>6</sub> converter.

However, the NRC recognizes that its fee rule including this policy could result in a disproportionate allocation of costs to a licensee in unusual situations. Exemptions for such unusual circumstances are provided for in 10 CFR 171.11(d) and are supported by *Allied-Signal v. NRC*. The NRC concludes that the issues raised by *Allied-Signal* regarding a disproportionate allocation of the budgeted costs to them, as a result of the elimination of Sequoyah Fuels from the fee base, falls within the confines of an unusual situation. Therefore, the NRC will consider *Allied-Signal's* comments regarding NRC's allocation of costs to them as an exemption request under 10 CFR 171.11(d). The Commission will issue a decision on this exemption request in the near future.

As indicated in the response in item 3(a), the NRC recognized that there will be adverse impacts on licensees as a result of implementing OBRA-90. The NRC has concluded after notice and comment rulemaking that it would not be appropriate to consider licensees'

ability to pass through costs in establishing its fee schedules, an approach now recommended by *Allied-Signal*. As stated in the decision to reinstate the exemption from annual fees for nonprofit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). No one sought judicial review of that decision.

The Commission disagrees with *Allied-Signal's* suggestion that it be placed in the uranium recovery fee category rather than that reserved for fuel facilities, where it is currently located. The NRC includes the regulatory costs for UF<sub>6</sub> conversion facilities in the fuel facility class of licensees. In developing the FY 1994 annual fees the NRC followed the established budget structure. This permitted the NRC to more readily identify and allocate generic and other regulatory costs to a class of licensees, and allowed the NRC to explain and to show the origin of these costs upon public examination of the record.

Although the UF<sub>6</sub> conversion facilities are included in the same class as fuel fabrication facilities for budgeting purposes, the annual fee is based on the NRC's costs attributable to the UF<sub>6</sub> conversion facility subclass of licensees. For example, generic safety and safeguards and other regulatory costs are included in the budgeted costs for the fuel facilities class of licensees. However, none of the safeguards costs are included in the annual fee for the UF<sub>6</sub> conversion facility subclass since none of these costs are attributable to this subclass. Thus, the costs included in the annual fee for the UF<sub>6</sub> subclass of licensees are those budgeted costs attributable to the subclass. These costs, and the resulting annual fee, would be the same independent of where they are included in the budget. Therefore, even if the UF<sub>6</sub> conversion facilities are more akin to uranium recovery facilities, the budgeted costs attributable to them result in a different annual fee.

The NRC further notes that the NRC's costs of promulgating regulations for a type of licensee do not necessarily decrease when the number of licenses in a class goes down. Whether a class of licensees is comprised of one licensee or one hundred, generic safety concerns may well remain the same, and the same research and regulations are necessary. This is what distinguishes the annual fee from the 10 CFR Part 170 fees, which are charged to recapture costs for specific services such as inspections and license amendments. By its very nature the annual fee is levied to recover the costs of providing services, such as the development of new

regulations, that cannot be attributed to a specific licensee.

The NRC does recognize the strain this policy unavoidably places on licensees who become, as *Allied-Signal* has, the single licensee in their class or subclass. The NRC will be reviewing this problem along with others associated with classification of fuel facilities. Any changes resulting from this review will be included in the FY 1995 proposed rule for notice and public comment.

#### 4. Fees for Independent Spent Fuel Storage Installations

**Comment.** One commenter, while noting that the willingness and ability of the NRC to hold the line on, and indeed reduce, the recoverable budget for FY 1994 is commendable, questioned the increase in fees from \$136,200 to \$363,500 for Independent Spent Fuel Storage Installations. As a minimum, the commenter believes NRC should identify the additional resources to be expended in this area.

**Response.** The reasons for the increased fees for independent spent fuel storage licensees are two-fold. First, the budgeted amount necessary to regulate spent fuel activities which is recovered through 10 CFR Part 170 and 171 fees increased to provide regulatory oversight for the increased number of facilities and to accomplish necessary rulemaking activities for spent fuel facilities. Additionally, as the licensing of these facilities are completed, the amount of fees from 10 CFR Part 170 decreased resulting in an increased amount of the budget that must be recovered from 10 CFR Part 171.

#### 5. Proration of Annual Fees

**Comment.** Several commenters concurred with the proposed proration provisions and permitting a waiver of annual fees for those who either filed for termination of their license prior to October 1, 1993, or permanently ceased licensed activities by September 30, 1993 but had not yet received necessary NRC approvals before the end of the fiscal year.

**Response.** The NRC has amended 10 CFR 171.17 to revise the proration provision for reactors and add a proration provision for materials licenses. The proration provisions are effective for FY 1994. The NRC proposed to prorate the annual fees for materials licenses upgraded or downgraded during the fiscal year. However, based on lack of sufficient data at this time on upgrades and downgrades of licenses and the administrative burden to implement this part of the proposed proration provision



for FY 1994, the NRC will prorate the annual fees only for those licenses for which a termination request or a request for a POL has been filed during the fiscal year and for new licenses issued during the fiscal year. This issue will be revisited in a future rulemaking.

#### E. Other Issues

##### 1. Impact of Fees on Licensees

*Comment.* Several commenters expressed concern about the impact of fees, particularly on the practice of nuclear medicine. Some commenters indicated that the increase in annual fees may indirectly limit access to critical radiological care, particularly for small, rural, medical practices. They suggest that the fees be reduced or that NRC freeze the annual license fee for a five-year period in order for them to stay in business.

*Response.* The NRC is concerned about the impact of its fees but has concluded that significant changes can only come about through the enactment of legislation. The Commission is satisfied that the fee schedule being promulgated for FY 1994 satisfies all statutory obligations. The Commission recently considered the effect of fees on the medical community and decided that it would not provide the significant fee relief requested by the medical commenters (59 FR 12555; March 17, 1994).

##### 2. Deferral of Fees for Standardized Plants and Early Site Reviews

*Comment.* One commenter urged NRC to reestablish the NRC's previous fee deferral policy for review of standardized plant designs and early site reviews indicating that fee deferral for review of the standardized designs is essential to encourage the development of such designs.

*Response.* The Commission decided in the FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by the EPA-92 and reconfirmed its FY 1991 decision. The NRC continues to believe the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these classes of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees.

##### 3. Revise 10 CFR 171.13 Notice

*Comment.* One commenter pointed out that 10 CFR 171.13 states that the NRC will publish a notice concerning the annual fee in the *Federal Register* during the first quarter of each fiscal year and that for the past four years the NRC has not met the requirement stated in the regulation. The commenter suggests that the NRC publish the proposed annual fee and professional hourly rate as early as possible within NRC's fiscal year to facilitate licensees' budget and planning processes.

*Response.* The NRC agrees with the commenter and acknowledges the realities of the situation that the proposed rule has been published during the third quarter of each of the past four fiscal years. The intent of the NRC is to publish the proposed rule as quickly as is practicable but realizes and agrees that it is unlikely that publication will occur during the first quarter of the fiscal year. To permit appropriate notice and comments, however, 10 CFR 171.13 will not be revised in this final rule but will be revised in a future rulemaking.

#### III. Final Action—Changes Included in the Final Rule

The NRC is amending its licensing, inspection, and annual fees for FY 1994. OBRA-90 requires that the NRC recover approximately 100 percent of its FY 1994 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection, and annual fees.

For FY 1994, the NRC's budget authority was originally \$547.7 million. The Commission, in its effort to streamline operations, proposed a \$12.7 million rescission to its original appropriation for FY 1994. Congress approved this NRC-proposed reduction. This resulted in a revised budget authority of \$535.0 million. Approximately \$22.0 million of the revised budget was appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$513.0 million in FY 1994 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1994 is about \$6 million less than the total amount to be recovered for FY 1993. The NRC estimates that approximately \$120.1 million will be recovered in FY 1994 from the fees assessed under 10 CFR part 170. The remaining \$392.9 million will be recovered through the 10 CFR part 171 annual fees established for FY 1994.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead but are now assigned directly to the class of licenses that they support. As a result of this direct assignment, the cost per direct FTE is about 3 percent less than it would have been without the additional direct assignment.

Under this final rule, fees for most materials and fuel cycle licensees will increase because—

(1) The NRC professional rate has increased slightly from \$132/hr to \$133/hr;

(2) The NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licensees that they support;

(3) The number of licenses in some classes has decreased as compared to FY 1993 due to license termination or consolidation, resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170; and

(4) The budget for some classes of licensees has increased.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1994, as stipulated in OBRA-90. Therefore, as in FY 1991, FY 1992, and FY 1993, the fees will become effective 30 days after publication of the final rule. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is



due on the effective date of the FY 1994 rule.

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

Five 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. The revisions also comply with the guidance in the Conference Committee Report on OBRA-90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the agency-wide professional hourly rate, which is used to determine the Part 170 fees, is increased from \$132 per hour to \$133 per hour (\$231,216 per direct FTE). The rate is based on the FY 1994 direct FTEs and that portion of the FY 1994 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF. As indicated earlier, the decrease in the FY 1994 budget as compared to the FY 1993 budget is primarily for direct program support, which is not included in the hourly rate. Thus, the reduction in the budget has limited impact on the hourly rate but will show up as a direct reduction to the amount allocated to the various classes of licensees.

Second, the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are revised to reflect the very small increase in the hourly rate.

Third, the definition of special projects as provided in § 170.3 of the regulations is revised as a result of (1) the NRC's experience in implementing the 100 percent fee recovery program during the past three years and (2) the NRC's most recent fee policy review, required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees rather than assessing specific fees under 10 CFR Part 170. These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulatory guides, and policy statements), and resolution of safety issues applicable to a class of licensees, such as those addressed in generic letters. Therefore, the applicable definition in § 170.3 and

the footnotes in §§ 170.21 and 170.31 are revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

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

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

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

The terms "alternate method", "reanalysis" and "unreviewed safety issue" are explained in more detail in Section IV, Section-By-Section Analysis.

Fourth, § 170.11(a) is amended to establish an exemption from fees for State-owned research reactors if they meet the technical design criteria for the exemption and are research reactors used primarily for educational training and academic research purposes.

Fifth, Fee Category 2 is amended by establishing two additional fee categories, 2.A.(2) and 2.A.(3), which cover licenses authorizing receipt and disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 2.A. category has been amended to read 2.A.(1). The current 4.D. fee category has been eliminated. This action recognizes that: (1) Source material licenses are issued to cover these licensed activities and therefore they are more appropriately placed in the source material category; and (2) that a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) material requiring the establishment of a new tailings pile and those licenses authorizing the receipt and disposal of 11e.(2) material incidental to tailings piles created by mill operations.

In addition, Category 16 of § 170.31, reciprocity, is amended to include a fee to recover the NRC's costs of reviewing revisions to the initial NRC Form 241 filed by 10 CFR 150.20 general licensees. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar

year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR Part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

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

Six amendments have been made to 10 CFR Part 171. First, § 171.11(a)(2) is amended to provide that State-owned research reactors used primarily for educational training and academic research purposes will be exempt from the annual fee. The NRC believes that this change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria for the exemption and are used primarily for educational training and academic research purposes.

Second, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1994 to recover approximately 100 percent of the FY 1994 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Third, fee Category 2 of § 171.16(d) is amended by establishing two new fee categories, 2.A.(3) and 2.A.(4), relating to the disposal of 11e.(2) byproduct material as defined by the Atomic Energy Act. The current fee Category 4.D. has been eliminated. This action recognizes that (1) part of the budgeted costs for the uranium recovery class of licensees should be allocated to source material licenses that authorize receipt and disposal of 11e.(2) material because some of these budgeted resources are used to regulate these licensees and (2) a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) byproduct material requiring the establishment of a new mill tailings pile and those non-operating mills that accept 11e.(2) byproduct material for disposal incidental to tailings piles created by mill operations.

In addition, fee Category 18 of § 171.16(d) is amended to assess fees to the Department of Energy (DOE) for its



general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95-604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming, site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC will assess annual fees to DOE for the total costs of DOE UMTRCA activities.

Fourth, 10 CFR 171.17 is amended to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees is prorated based on applications filed after October 1 of the fiscal year to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or POL must also permanently cease operations of relevant licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable

fee category(ies) for that fiscal year. New licenses issued on or after April 1 will not be assessed an annual fee for that fiscal year.

The proration provision in § 171.17 applicable to reactors is amended to provide that, for licensees who have requested an amendment to withdraw operating authority permanently during the FY, the annual fee will be prorated based on the number of days during the FY the operating license was in effect before either the possession only license was issued or the license was terminated.

Fifth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1994 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993, are subject to FY 1994 annual fees. This change is in recognition of the fact that since the final FY 1993 rule was published in July 1993, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1993 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1993. Similar situations existed after the FY 1991 and FY 1992 rules were published, and in those cases NRC provided an exemption from the requirement that the annual fee is waived only where a license is terminated before October 1 of each fiscal year.

Sixth, § 171.19 is amended to credit the quarterly partial payments already made by certain licensees in FY 1994 either toward their total annual fee to be assessed or to make refunds, if necessary.

The 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991, FY 1992, and FY 1993 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of

licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of 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).

During the past three years, many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainties regarding agency policy on this issue, the NRC amended 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38666).

#### C. FY 1994 Budgeted Costs

The FY 1994 budgeted costs, by major activity, that will be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY  
[Dollars in millions]

| Recovery method                              | Estimated amount |
|----------------------------------------------|------------------|
| Nuclear Waste Fund .....                     | \$22.0           |
| Part 170 (license and inspection fees) ..... | 120.1            |
| Other receipts .....                         | .1               |
| Part 171 (annual fees):                      |                  |
| Power Reactors .....                         | 302.1            |
| Nonpower Reactors .....                      | .4               |
| Fuel Facilities .....                        | 16.8             |
| Spent Fuel Storage .....                     | 2.2              |
| Uranium Recovery .....                       | 2.1              |
| Transportation .....                         | 4.0              |



TABLE I.—RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY—Continued  
(Dollars in millions)

| Recovery method                                            | Estimated amount |
|------------------------------------------------------------|------------------|
| Material Users .....                                       | 138.6            |
| Subtotal Part 171 .....                                    | 366.2            |
| Costs remaining to be recovered not identified above ..... | 26.6             |
| Total .....                                                | 535.0            |

<sup>1</sup> Includes \$6.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The \$26.6 million identified for those activities which are not identified as either 10 CFR parts 170 or 171 or the NWF in Table I are distributed among the classes of licensees as follows:

\$24.4 million to operating power reactors;  
\$7 million to fuel facilities; and  
\$1.5 million to other materials licensees.

In addition, approximately \$6.3 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower tier small entity fee of \$400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1994 budget authority in accordance with OBRA-90, the NRC will recover \$5.3 million of the \$6.3 million from operating power reactors and the remaining \$1.0 million from other nonreactor entities that do not meet NRC small entity size standards.

This distribution results in an additional charge (surcharge) of approximately \$273,000 per operating power reactor; \$55,770 for each HEU, LEU, UF<sub>6</sub>, and each other fuel facility license; \$1,670 for each materials license in a category that generates a significant amount of low level waste; and \$170 for other materials licenses. When added to the base annual fee of approximately \$2.8 million per reactor, this will result in an annual fee of approximately \$3.1 million per operating power reactor. The total fuel facility annual fee will be between approximately \$1.2 million and \$3.2 million. The total annual fee for materials licenses will vary depending on the fee category(ies) assigned to the license.

The additional charges not directly or solely attributable to a specific class of NRC licensees and costs not recovered from all NRC licensees on the basis of previous Commission policy decisions will be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major

classes of licensees are shown in section IV of this final rule.

#### IV. 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, Code of Federal Regulations.

##### Part 170

##### Section 170.3 Definitions

This section is amended to revise the definition of special projects. This change is based on NRC's experience during the past three years in implementing the 100 percent fee recovery program and the fee policy review required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR part 171 annual fees instead of assessing specific fees under 10 CFR part 170. Therefore, the definition in § 170.3, as well as the footnotes in §§ 170.21 and 170.31, are amended to indicate that 10 CFR part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

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

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

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

The terms "alternate method", "reanalysis", and "unreviewed safety issue" as used in item 1 are further explained as follows:

"Alternate method" is a method that deviates significantly (i.e., more than necessary for plant-specific or generic program development) from the method proposed in the Generic Letter or NRC Bulletin;

"Reanalysis" is an analysis of an alternate method but not a review of changes to a method which is consistent with that proposed by the Generic Letter or Bulletin. These types of "consistent" changes could be revisions submitted

pursuant to an NRC staff request for additional information or modification, or changes necessary for plant-specific or generic implementation; and

"Unreviewed safety issue" is a safety issue unrelated to the safety issue identified in the generic communication that arises from proposal of an alternate method and will require reanalysis by the NRC staff.

##### Section 170.11 Exemptions

Paragraph (a)(9) of this section is established to provide an exemption from fees for State-owned research reactors that meet certain technical design criteria and are used primarily for educational training and academic research purposes. Currently, Federal agencies are exempt from payment of 10 CFR part 170 fees under the Independent Offices Appropriation Act (IOAA). The proposed rule would have amended only 10 CFR part 171. The NRC believes however, that this change to 10 CFR part 170 is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria for the exemption and are used primarily for educational training and academic research purposes. There is currently one research reactor, owned by the Rhode Island Atomic Energy Commission, that will be exempt under this amendment to § 170.11.

##### 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 1994 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1994 for all fee categories that are based on full cost is \$133 per hour, or \$231,216 per direct FTE. The rate is based on the FY 1994 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991, FY 1992, and FY 1993. As noted earlier, in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste. The method is as follows:

1. All direct FTEs are identified in Table II by major program. For FY 1994 the NRC has traced additional direct effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee



on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The budgeted costs for these activities had previously been included in overhead but are now being directly assigned to the class of licensees that they support.

TABLE II.—ALLOCATION OF DIRECT FTEs BY MAJOR PROGRAM

| Major program                                                                  | No. of direct FTEs <sup>1</sup> |
|--------------------------------------------------------------------------------|---------------------------------|
| Reactor Safety and Safeguards Regulation .....                                 | 1,034.4                         |
| Reactor Safety Research .....                                                  | 111.3                           |
| Nuclear Material and Low Level Waste Safety and Safeguards Regulation .....    | 352.5                           |
| Reactor Special and Independent Reviews, Investigations, and Enforcement ..... | 111.7                           |
| Nuclear Material Management and Support .....                                  | 19.0                            |
| Total direct FTE .....                                                         | 2,162.9                         |

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

<sup>2</sup> In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:

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

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

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

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining \$376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of \$231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is \$133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing \$376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-

76, "Performance of Commercial Activities."

TABLE III.—FY 1994 BUDGET AUTHORITY BY MAJOR CATEGORY  
(Dollars in millions)

|                                                           |         |
|-----------------------------------------------------------|---------|
| Salaries and benefits .....                               | \$259.5 |
| Administrative support .....                              | 86.7    |
| Travel .....                                              | 15.9    |
| Total nonprogram support obligations .....                | 362.1   |
| Program support .....                                     | 150.9   |
| Total Budget Authority .....                              | 513.0   |
| Less direct program support and offsetting receipts ..... | 136.4   |
| Budget Allocated to Direct FTE .....                      | 376.6   |
| Professional Hourly Rate .....                            | 133     |

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 1994 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1994 rate shown in § 170.20. Although the amounts of the import and export licensing fees in § 170.21, facility Category K, have not changed from FY 1993 as a result of the very small increase in the hourly rate from \$132 per hour to \$133 per hour, they are being published for purposes of convenience.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8,

1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

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

The licensing and inspection fees in this section are modified to recover the FY 1994 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 adjusted to reflect the very small increase in the professional hourly rate from \$132 per hour in FY 1993 to \$133 per hour in FY 1994. In many cases, the fees for FY 1994 are the same as those assessed in FY 1993.

The amounts of the licensing and inspection flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to the nearest \$10.

The revised flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The revised fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

Fee Category 2 is amended by establishing two additional fee categories 2.A.(2) and 2.A.(3) which cover licenses authorizing receipt and disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 2.A. category has been amended to read 2.A.(1). The current 4.D. fee category has been eliminated. This action recognizes that (1) source material licenses are issued to cover these licensed activities and they are more appropriately placed in the source material category and (2) that a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) material requiring the establishment of a new tailings pile from those licenses authorizing the receipt and disposal of 11e.(2) material incidental to tailings piles created by mill operations.

Fee Category 16, reciprocity, is also amended to include a fee to recover the costs incurred by the NRC for the review of revisions to the information submitted on the initial NRC Form-241 filed by 10 CFR 150.20 general licensees



during the remainder of the calendar year. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR Part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

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 \$133, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

#### Part 171

##### Section 171.11 Exemptions

Paragraph (a)(2) of this section is amended to exempt State-owned reactors used primarily for educational training and academic research purposes from annual fees. The NRC believes that this change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes. There is currently one research reactor, owned

by the Rhode Island Atomic Energy Commission, that will be exempt under this amendment to § 171.11.

#### Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect FY 1994 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1994. Table IV shows the budgeted costs that have been allocated directly to operating power reactors as part of the base fee. They have been expressed in terms of the NRC's FY 1994 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES<sup>1</sup>

|                                                                                 | Program element total   |            | Allocated to power reactors |            |
|---------------------------------------------------------------------------------|-------------------------|------------|-----------------------------|------------|
|                                                                                 | Program support (\$, K) | Direct FTE | Program support (\$, K)     | Direct FTE |
| <b>Reactor Safety and Safeguards Regulation (RSSR)</b>                          |                         |            |                             |            |
| Standard Reactor Designs .....                                                  | \$9,531                 | 96.3       | \$9,361                     | 92.8       |
| Reactor License Renewal .....                                                   | 600                     | 33.9       | 600                         | 33.9       |
| Reactor and Site Licensing .....                                                | 1,810                   | 34.7       | 1,810                       | 29.8       |
| Resident Inspections .....                                                      |                         | 207.0      |                             | 207.0      |
| Region-Based Inspections .....                                                  | 2,780                   | 235.0      | 2,780                       | 229.8      |
| Interns (HQ and Regions) .....                                                  |                         | 23.0       |                             | 23.0       |
| Special Inspections .....                                                       | 970                     | 42.7       | 970                         | 42.7       |
| License Maintenance and Safety Evaluations .....                                | 4,142                   | 208.5      | 4,142                       | 208.5      |
| Plant Performance .....                                                         | 927                     | 52.1       | 927                         | 52.1       |
| Human Performance .....                                                         | 4,760                   | 54.7       | 4,403                       | 51.1       |
| Other Safety Reviews and Assistance .....                                       | 3,443                   | 46.5       | 3,213                       | 38.8       |
| RSSR program total .....                                                        |                         |            | \$28,206                    | 1,009.5    |
| <b>Reactor Safety Research (RSR)</b>                                            |                         |            |                             |            |
| Standard Reactor Designs .....                                                  | \$16,676                | 29.3       | \$16,676                    | 29.3       |
| Reactor Aging & License Renewal .....                                           | 23,273                  | 13.7       | 22,573                      | 13.6       |
| Plant Performance .....                                                         | 3,173                   | 4.2        | 3,173                       | 4.2        |
| Human Reliability .....                                                         | 4,428                   | 7.0        | 4,428                       | 7.0        |
| Reactor Accident Analysis .....                                                 | 20,284                  | 26.7       | 20,284                      | 26.7       |
| Safety Issue Resolution and Regulatory Improvements .....                       | 10,240                  | 30.4       | 10,240                      | 30.4       |
| RSR program total .....                                                         |                         |            | \$77,374                    | 111.2      |
| <b>Nuclear Material &amp; Low Level (NMLL)</b>                                  |                         |            |                             |            |
| NMLL (NMSS):                                                                    |                         |            |                             |            |
| Fuel Cycle Safety and Safeguards .....                                          | \$4,783                 | 85.8       | \$1,494                     | 2.8        |
| LLW Licensing and Inspection .....                                              | 592                     | 14.3       |                             | 1.4        |
| Uranium Recovery Licensing and Inspection .....                                 | 265                     | 14.4       | 21                          | 0          |
| Decommissioning .....                                                           | 2,215                   | 30.8       | 9                           | 6.7        |
| NMLL (RES):                                                                     |                         |            |                             |            |
| Environmental Policy and Decommissioning .....                                  | 2,410                   | 9.0        | 964                         | 3.6        |
| NMLL program total .....                                                        |                         |            | \$2,488                     | 14.5       |
| <b>Reactor Special and Independent Reviews, Investigations, and Enforcement</b> |                         |            |                             |            |
| AEOD:                                                                           |                         |            |                             |            |
| Diagnostic Evaluations .....                                                    | 288                     | 5.0        | 288                         | 5.0        |
| Incident Investigations .....                                                   | 26                      | 1.0        | 26                          | 1.0        |
| NRC Incident Response .....                                                     | 1,854                   | 26.0       | 1,854                       | 24.0       |
| Operational Experience Evaluation .....                                         | 5,447                   | 30.0       | 5,447                       | 29.0       |



TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES<sup>1</sup>—Continued

|                                                            | Program element total   |            | Allocated to power reactors |                                 |
|------------------------------------------------------------|-------------------------|------------|-----------------------------|---------------------------------|
|                                                            | Program support (\$, K) | Direct FTE | Program support (\$, K)     | Direct FTE                      |
| Committee to Review Generic Requirements .....             | .....                   | 2.0        | .....                       | 2.0                             |
| AEOD Subtotal .....                                        | .....                   | .....      | \$7,615                     | 61.0                            |
| Advisory Committee on Reactor Safeguards .....             | 181                     | 20.5       | 181                         | 20.5                            |
| Office of Investigations .....                             | .....                   | 17.0       | .....                       | 17.0                            |
| Office of Enforcement .....                                | 10                      | 7.2        | 10                          | 7.0                             |
| RSIRIE program total .....                                 | .....                   | .....      | \$7,806                     | 105.5                           |
| Total base fee amount allocated to power reactors .....    | .....                   | .....      | .....                       | \$402.7 (million <sup>2</sup> ) |
| Less estimated part 170 power reactor fees (million) ..... | .....                   | .....      | .....                       | \$100.6                         |
| Part 171 base fees for operating power reactors .....      | .....                   | .....      | .....                       | \$302.1 (million)               |

<sup>1</sup> 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.

<sup>2</sup> 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, shown in Table V below for each the base annual fees that will be assessed for FY 1994 are the amounts 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 ..... | \$2,805,000 |
| 2. Beaver Valley 2 .....   | do .....                        | 2,805,000   |
| 3. Braidwood 1 .....       | do .....                        | 2,805,000   |
| 4. Braidwood 2 .....       | do .....                        | 2,805,000   |
| 5. Byron 1 .....           | do .....                        | 2,805,000   |
| 6. Byron 2 .....           | do .....                        | 2,805,000   |
| 7. Callaway 1 .....        | do .....                        | 2,805,000   |
| 8. Comanche Peak 1 .....   | do .....                        | 2,805,000   |
| 9. Comanche Peak 2 .....   | do .....                        | 2,805,000   |
| 10. Diablo Canyon 1 .....  | do .....                        | 2,803,000   |
| 11. Diablo Canyon 2 .....  | do .....                        | 2,803,000   |
| 12. Farley 1 .....         | do .....                        | 2,805,000   |
| 13. Farley 2 .....         | do .....                        | 2,805,000   |
| 14. Ginna .....            | do .....                        | 2,805,000   |
| 15. Haddam Neck .....      | do .....                        | 2,805,000   |
| 16. Harris 1 .....         | do .....                        | 2,805,000   |
| 17. Indian Point 2 .....   | do .....                        | 2,805,000   |
| 18. Indian Point 3 .....   | do .....                        | 2,805,000   |
| 19. Kewaunee .....         | do .....                        | 2,805,000   |
| 20. Millstone 3 .....      | do .....                        | 2,805,000   |
| 21. North Anna 1 .....     | do .....                        | 2,805,000   |
| 22. North Anna 2 .....     | do .....                        | 2,805,000   |
| 23. Point Beach 1 .....    | do .....                        | 2,805,000   |
| 24. Point Beach 2 .....    | do .....                        | 2,805,000   |
| 25. Prairie Island 1 ..... | do .....                        | 2,805,000   |
| 26. Prairie Island 2 ..... | do .....                        | 2,805,000   |
| 27. Robinson 2 .....       | do .....                        | 2,805,000   |
| 28. Salem 1 .....          | do .....                        | 2,805,000   |
| 29. Salem 2 .....          | do .....                        | 2,805,000   |
| 30. Seabrook 1 .....       | do .....                        | 2,805,000   |
| 31. South Texas 1 .....    | do .....                        | 2,805,000   |
| 32. South Texas 2 .....    | do .....                        | 2,805,000   |
| 33. Summer 1 .....         | do .....                        | 2,805,000   |
| 34. Surry 1 .....          | do .....                        | 2,805,000   |
| 35. Surry 2 .....          | do .....                        | 2,805,000   |
| 36. Turkey Point 3 .....   | do .....                        | 2,805,000   |
| 37. Turkey Point 4 .....   | do .....                        | 2,805,000   |
| 38. Vogtle 1 .....         | do .....                        | 2,805,000   |



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

| Reactors                | Containment type          | Annual fee |
|-------------------------|---------------------------|------------|
| 39. Vogtle 2            | do                        | 2,805,000  |
| 40. Wolf Creek 1        | do                        | 2,805,000  |
| 41. Zion 1              | do                        | 2,805,000  |
| 42. Zion 2              | do                        | 2,805,000  |
| 43. Catawba 1           | PWR—Ice Condenser         | 2,804,000  |
| 44. Catawba 2           | do                        | 2,804,000  |
| 45. Cook 1              | do                        | 2,804,000  |
| 46. Cook 2              | do                        | 2,804,000  |
| 47. McGuire 1           | do                        | 2,804,000  |
| 48. McGuire 2           | do                        | 2,804,000  |
| 49. Sequoyah 1          | do                        | 2,804,000  |
| 50. Sequoyah 2          | do                        | 2,804,000  |
| Combustion Engineering: |                           |            |
| 1. Arkansas 2           | PWR Large Dry Containment | 2,804,000  |
| 2. Calvert Cliffs 1     | do                        | 2,804,000  |
| 3. Calvert Cliffs 2     | do                        | 2,804,000  |
| 4. Ft. Calhoun 1        | do                        | 2,804,000  |
| 5. Maine Yankee         | do                        | 2,804,000  |
| 6. Millstone 2          | do                        | 2,804,000  |
| 7. Palisades            | do                        | 2,804,000  |
| 8. Palo Verde 1         | do                        | 2,801,000  |
| 9. Palo Verde 2         | do                        | 2,801,000  |
| 10. Palo Verde 3        | do                        | 2,801,000  |
| 11. San Onofre 2        | do                        | 2,801,000  |
| 12. San Onofre 3        | do                        | 2,801,000  |
| 13. St. Lucie 1         | do                        | 2,804,000  |
| 14. St. Lucie 2         | do                        | 2,804,000  |
| 15. Waterford 3         | do                        | 2,804,000  |
| Babcock & Wilcox:       |                           |            |
| 1. Arkansas 1           | do                        | 2,804,000  |
| 2. Crystal River 3      | do                        | 2,804,000  |
| 3. Davis Besse 1        | do                        | 2,804,000  |
| 4. Oconee 1             | do                        | 2,804,000  |
| 5. Oconee 2             | do                        | 2,804,000  |
| 6. Oconee 3             | do                        | 2,804,000  |
| 7. Three Mile Island 1  | do                        | 2,804,000  |
| General Electric:       |                           |            |
| 1. Browns Ferry 1       | Mark I                    | 2,785,000  |
| 2. Browns Ferry 2       | do                        | 2,785,000  |
| 3. Browns Ferry 3       | do                        | 2,785,000  |
| 4. Brunswick 1          | do                        | 2,785,000  |
| 5. Brunswick 2          | do                        | 2,785,000  |
| 6. Clinton 1            | Mark III                  | 2,785,000  |
| 7. Cooper               | Mark I                    | 2,785,000  |
| 8. Dresden 2            | do                        | 2,785,000  |
| 9. Dresden 3            | do                        | 2,785,000  |
| 10. Duane Arnold        | do                        | 2,785,000  |
| 11. Fermi 2             | do                        | 2,785,000  |
| 12. Fitzpatrick         | do                        | 2,785,000  |
| 13. Grand Gulf 1        | Mark III                  | 2,785,000  |
| 14. Hatch 1             | Mark I                    | 2,785,000  |
| 15. Hatch 2             | do                        | 2,785,000  |
| 16. Hope Creek 1        | do                        | 2,785,000  |
| 17. LaSalle 1           | Mark II                   | 2,785,000  |
| 18. LaSalle 2           | do                        | 2,785,000  |
| 19. Limerick 1          | do                        | 2,785,000  |
| 20. Limerick 2          | do                        | 2,785,000  |
| 21. Millstone 1         | Mark I                    | 2,785,000  |
| 22. Monticello          | do                        | 2,785,000  |
| 23. Nine Mile Point 1   | do                        | 2,785,000  |
| 24. Nine Mile Point 2   | Mark II                   | 2,785,000  |
| 25. Oyster Creek        | Mark I                    | 2,785,000  |
| 26. Peach Bottom 2      | do                        | 2,785,000  |
| 27. Peach Bottom 3      | do                        | 2,785,000  |
| 28. Perry 1             | Mark III                  | 2,785,000  |
| 29. Pilgrim             | Mark I                    | 2,785,000  |
| 30. Quad Cities 1       | do                        | 2,785,000  |
| 31. Quad Cities 2       | do                        | 2,785,000  |
| 32. River Bend 1        | Mark III                  | 2,785,000  |
| 33. Susquehanna 1       | Mark II                   | 2,785,000  |
| 34. Susquehanna 2       | do                        | 2,785,000  |
| 35. Vermont Yankee      | Mark I                    | 2,785,000  |



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

| Reactors                       | Containment type         | Annual fee |
|--------------------------------|--------------------------|------------|
| 36. Washington Nuclear 2 ..... | Mark II .....            | 2,782,000  |
| Other Reactor:                 |                          |            |
| 1. Big Rock Point .....        | GE Dry Containment ..... | 2,785,000  |

The "Other Reactor" listed in Table V was not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1994 annual fees based on a request filed with the NRC in accordance with § 171.11. The total amount of \$0.2 million to be paid by Big

Rock Point has been subtracted from the total amount assessed operating reactors as a surcharge.

Paragraph (b)(3) is revised to change the fiscal year references from FY 1993 to FY 1994. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1994. This surcharge is added to the base annual fee for each operating power reactor shown in Table V. The purpose of this surcharge is to recover

those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA-90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1994 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

[Dollars in millions]

| Category of costs                                                                                                     | FY 1994 budgeted costs |
|-----------------------------------------------------------------------------------------------------------------------|------------------------|
| 1. Activities not attributable to an existing NRC licensee or class of licensee:                                      |                        |
| a. Reviews for DOE/DOD reactor projects, and West Valley Demonstration Project;                                       | \$2.4                  |
| b. International cooperative safety program and international safeguards activities; and                              | 8.2                    |
| c. Low-level waste disposal generic activities;                                                                       | 6.0                    |
| 2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy: |                        |
| a. Licensing and inspection activities associated with nonprofit educational institutions; and                        | 7.8                    |
| b. Costs not recovered from Part 171 for small entities.                                                              | 5.3                    |
| Subtotal budgeted costs .....                                                                                         | \$29.7                 |
| Less amount to be assessed to small older reactors .....                                                              | .2                     |
| Total budgeted costs .....                                                                                            | \$29.5                 |

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$29.5 \text{ million}}{108} = \$273,000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of \$2,805,000 and an additional charge of \$273,000 for a total annual fee of \$3,078,000 for FY 1994.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, \$373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors.

Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of \$62,200 per operating license. The Energy Policy Act establishes an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda,

Maryland for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC intends to continue to grant exemptions from the annual fee to those Federally owned research and test reactors who meet the exemption criteria specified in § 171.11. The NRC is amending § 171.11(a)(2) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission.

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.

§ 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$250,000 to \$3.5 million pay a maximum annual fee of \$1,800 per licensed category. A second or lower-tier small entity fee of \$400 is in place for licensees with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000. Although the amounts of the small entity fees have not changed for FY 1994, they are being published for purposes of convenience.

Paragraph (d) is revised to reflect the FY 1994 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1994 generic costs totalling \$63.7 million that apply to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Fee Category 2 is amended by establishing two new fee categories 2.A.(3) and 2.A.(4) relating to the disposal of Section 11e.(2) byproduct

material as defined by the Atomic Energy Act. The current 4.D. category has been eliminated. This action recognizes that (1) part of the budgeted costs for the uranium recovery class of licensees should be allocated to source material licensees that authorize receipt and disposal of 11e.(2) material because some of these budgeted resources are used to regulate these licensees and (2) a further distinction should be made between those licenses whose primary purpose is to authorize disposal of 11e.(2) byproduct material requiring the establishment of a new mill tailings pile for disposal of 11e.(2) material and those non-operating mills that accept 11e.(2) byproduct material for disposal incidental to tailings piles created by mill operations.

In addition, Fee Category 18 is amended to assess fees to the Department of Energy (DOE) for use of the general license provided under 10 CFR 40.27. Currently, DOE is billed for the issuance of transportation Certificates of Compliance. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95-604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The § 40.27 general license covers only post-reclamation closure custody and site surveillance. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure

of the Spook, Wyoming site had been achieved. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent in the FY 1991 final fee rule to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the IOAA, the NRC will assess annual fees for the total costs of DOE UMTRCA activities to DOE.

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

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES<sup>1</sup>

|                                                                                  | Total program element |      | Allocated to fuel facility |        |
|----------------------------------------------------------------------------------|-----------------------|------|----------------------------|--------|
|                                                                                  | Program support \$, K | FTE  | Program support \$, K      | FTE    |
| <b>NMLL (Research)</b>                                                           |                       |      |                            |        |
| Radiation Protection/Health Effects .....                                        | \$1,575               | 5.3  | \$315                      | 1.1    |
| Environmental Policy and Decommissioning .....                                   | 2,410                 | 9.0  | 241                        | .9     |
| NMLL (RES) program total .....                                                   |                       |      | 556                        | 2.0    |
| <b>NMLL (NMSS)</b>                                                               |                       |      |                            |        |
| Fuel Cycle Safety and Safeguards .....                                           | \$4,783               | 85.8 | \$2,432                    | 57.1   |
| Event Evaluation .....                                                           | 0                     | 14.9 | 0                          | 4.2    |
| Decommissioning .....                                                            | 2,215                 | 30.8 | 309                        | 10.5   |
| Uranium Recovery (Dam Safety) .....                                              | 250                   | 7.6  | 3                          | 0      |
| NMLL (NMSS) program total .....                                                  |                       |      | 2,744                      | 71.8   |
| <b>NMLL (MSIRIE)</b>                                                             |                       |      |                            |        |
| Incident Response .....                                                          | 186                   | 6.0  | 0                          | 1.0    |
| Enforcement .....                                                                | 10                    | 6.8  | 0                          | 1.2    |
| NMLL MSIRIE program total .....                                                  |                       |      | 0                          | 2.2    |
| Total NMLL .....                                                                 |                       |      | \$3,300                    | 76.0   |
| Total base fee amount allocated to fuel facilities (million <sup>2</sup> ) ..... |                       |      |                            | \$20.8 |
| Less part 170 fuel facility fees (million) .....                                 |                       |      |                            | 4.0    |



TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES<sup>1</sup>—Continued

|                                                        | Total program element |     | Allocated to fuel facility |        |
|--------------------------------------------------------|-----------------------|-----|----------------------------|--------|
|                                                        | Program support \$, K | FTE | Program support \$, K      | FTE    |
| Part 171 base fees for fuel facilities (million) ..... |                       |     |                            | \$16.8 |

<sup>1</sup> 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.

<sup>2</sup> Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1994 BUDGET TO MATERIAL USERS' BASE FEES<sup>1</sup>

|                                                                        | Total program element |       | Allocated to materials users |        |
|------------------------------------------------------------------------|-----------------------|-------|------------------------------|--------|
|                                                                        | Program support \$, K | FTE   | Program support \$, K        | FTE    |
| <b>NMLL (Research)</b>                                                 |                       |       |                              |        |
| Materials licensee performance .....                                   | \$450                 | 1.2   | \$405                        | 1.1    |
| Materials regulatory standards .....                                   | 1,495                 | 12.2  | 1,346                        | 11.0   |
| Radiation protection/health effects .....                              | 1,575                 | 5.3   | 1,134                        | 3.8    |
| Environmental policy and decommissioning .....                         | 2,410                 | 9.0   | 1,085                        | 4.1    |
| Total NMLL (RES) .....                                                 |                       |       | 3,970                        | 20.0   |
| <b>NMLL (NMSS)</b>                                                     |                       |       |                              |        |
| Licensing/inspection of materials users .....                          | \$965                 | 109.3 | \$869                        | 99.5   |
| Event evaluation .....                                                 |                       | 16.2  |                              | 11.4   |
| Information technology .....                                           | 1,100                 |       | 89                           |        |
| Decommissioning .....                                                  | 2,215                 | 30.8  | 1,707                        | 12.0   |
| Low level waste—on site disposal .....                                 | 592                   | 14.3  | 71                           | 2.3    |
| Total NMLL (NMSS) .....                                                |                       |       | 2,736                        | 125.2  |
| <b>NMLL (MSIRIE)</b>                                                   |                       |       |                              |        |
| Analysis and evaluation of operational data .....                      | \$186                 | 6.0   | \$167                        | 4.5    |
| Office of Investigations .....                                         |                       | 7.0   |                              | 6.3    |
| Office of Enforcement .....                                            | 10                    | 6.8   | 9                            | 5.0    |
| Total NMLL Program .....                                               |                       |       | 6,882                        | 161.0  |
| Base amount allocated to materials users (million <sup>2</sup> ) ..... |                       |       |                              | \$44.1 |
| Less part 170 material users fees (million) .....                      |                       |       |                              | 5.5    |
| PART 171 base fees for material users (million) .....                  |                       |       |                              | 38.6   |

<sup>1</sup> 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.

<sup>2</sup> 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 \$16.8 million in budgeted costs to the individual fuel facilities is based, as in FYs 1991–1993, primarily on the OBRA–90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as

compared to other facilities. However, safety program assessment and safety event evaluation costs for fuel facilities are uniformly allocated to HEU and LEU facilities because these activities apply equally to each of the HEU and LEU facilities.

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

| Type of facility            | Annual fee—safeguards and safety |
|-----------------------------|----------------------------------|
| High enriched fuel:         |                                  |
| Nuclear Fuel Services ..... | \$3,176,000                      |
| Babcock and Wilcox .....    | 3,176,000                        |

| Type of facility                        | Annual fee—safeguards and safety |
|-----------------------------------------|----------------------------------|
| Subtotal .....                          | 6,352,000                        |
| Low enriched fuel:                      |                                  |
| Siemens Nuclear Power ..                | \$1,429,000                      |
| Babcock and Wilcox .....                | 1,429,000                        |
| General Electric .....                  | 1,429,000                        |
| Westinghouse .....                      | 1,429,000                        |
| Combustion Engineering (Hematite) ..... | 1,429,000                        |
| General Atomics .....                   | 1,429,000                        |
| Subtotal .....                          | 8,574,000                        |
| UF <sub>6</sub> conversion:             |                                  |
| Allied-Signal Corp .....                | \$1,114,000                      |



| Type of facility                                             | Annual fee—<br>safeguards<br>and safety |
|--------------------------------------------------------------|-----------------------------------------|
| Other fuel facilities (3 facilities at \$254,000 each) ..... | 762,000                                 |
| Total .....                                                  | 16,802,000                              |

One of Combustion Engineering's (CE) low enriched fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals' decision of March 16, 1993, directing the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC granted an exemption to one of CE's low enriched uranium fuel facilities for FY 1994. The NRC has therefore excluded this facility from the calculation of the FY 1994 annual fees for the low enriched fuel category.

Of the \$2.1 million attributable to the uranium recovery class of licensees, about \$1.5 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating power reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under 10 CFR Part 171. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Approximately 44 percent of the remaining costs of \$639,000 for uranium recovery is attributable to uranium mills (Class I facilities) and facilities that dispose of 11e.(2) byproduct materials, approximately 39 percent is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities), and the remaining 17 percent is allocated to the other uranium recovery facilities (e.g., extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

- 2.A.(2)—Class I facilities: \$74,500
- 2.A.(2)—Class II facilities: \$41,200
- 2.A.(2)—Other facilities: \$36,200
- 2.A.(3)—11e.(2) disposal: \$67,000
- 2.A.(4)—11e.(2) disposal incidental to existing tailings site: \$8,700

The annual fees for FY 1994 for the uranium recovery class of licensees are less than the FY 1992 fees and are higher than the FY 1993 annual fees. The total amount of fees that must be recovered from uranium recovery commercial licensees has decreased by about 10 percent compared to FY 1993; however, the annual fee per facility has increased for two basic reasons. First,

the amount that is expected to be recovered through part 170 fees has decreased as a result of completing the licensing of the Envirocare 11e.(2) byproduct disposal facility. This requires relatively more costs to be recovered through annual fees. The second cause of the increase is a decrease in the number of licensees in the class to be assessed annual fees for FY 1994.

For spent fuel storage licenses, the generic costs of \$2.2 million have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of \$363,500. This represents a fee increase compared to FY 1993 in order to recover the increased budget necessary to perform rulemakings and the regulatory oversight over the increased number of licensees.

To equitably and fairly allocate the \$38.6 million attributable to the approximately 6,500 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licensees is developed as follows:

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

The constant is the multiple necessary to recover \$38.6 million and is 2.6 for FY 1994. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1994, unique costs of approximately \$2.6 million were identified for the medical improvement program which is attributable to medical licensees. Materials annual fees for FY 1994 are 13 to 17 percent higher compared to the FY 1993 annual fees. There are two basic reasons for the changes in the fees from FY 1993. First, the FY 1994 budgeted amount attributable to materials licensees is about 10 percent higher than the comparable FY 1993 to reflect the cost necessary to regulate this class of licensees and the direct allocation of certain budgeted costs as opposed to including them in the hourly rate.

Second, the number of licensees to be assessed annual fees in FY 1994 has decreased (from about 6,800 to about 6,500), resulting in a 4 percent increase in fees. The materials fees must be established at these levels in order to comply with the mandate of OBRA-90 to recover approximately 100 percent of the NRC's FY 1994 budget authority.

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

To recover the \$4.0 million attributable to the transportation class of licensees, \$923,000 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities (\$3.1 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is \$64,700 for users and fabricators and \$900 for users only.

The amount or range of the FY 1994 base annual fees for all materials licensees is summarized as follows:

#### MATERIALS LICENSES BASE ANNUAL FEE RANGES

| Category of license                                | Annual fees                      |
|----------------------------------------------------|----------------------------------|
| Part 70—High enriched fuel.                        | \$3.2 million.                   |
| Part 70—Low enriched fuel.                         | \$1.4 million.                   |
| Part 40—UF <sub>6</sub> conversion.                | \$1.1 million.                   |
| Part 40—Uranium recovery.                          | \$36,200 to \$74,500.            |
| Part 30—Byproduct material.                        | \$970 to \$30,900 <sup>1</sup> . |
| Part 71—Transportation of radioactive material.    | \$900 to \$64,700.               |
| Part 72—Independent storage of spent nuclear fuel. | \$363,500.                       |

<sup>1</sup> Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$430,500.

Paragraph (e) is amended to establish the additional charge to be added to the base annual fees shown in paragraph (d) of this final rule. The Commission is continuing the approach used in FY 1993 so as to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered



in order to comply with the requirements of OBRA-90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of \$8.1 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

| Category of costs                                                                                                            | FY 1994 budgeted costs (\$ in millions) |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| 1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities ..... | \$8.1                                   |

Of the \$8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount (\$6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of \$55,600 per facility. Thus, the LLW charge will be \$55,600 per HEU, LEU, UF<sub>6</sub> facility, and each of the other 3 fuel facilities. The remaining \$1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: \$1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the \$1,500 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is \$22,800.

Of the \$6.3 million not recovered from small entities, \$1.0 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of \$170 per category for each fuel facility and materials 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) pays a base annual fee of \$3,176,000 and an additional charge of \$55,770 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of \$30,900 and an additional charge of \$1,670, for a total FY 1994 annual fee of \$32,570.

#### Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision for materials licensees and to revise the provision for reactors. The annual fee for materials licensees would be prorated based on applications filed after October 1 of the fiscal year either to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees who file applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or a POL must also permanently cease operations of those licensed activities during the periods mentioned for the fee to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee categories for that fiscal year. New licenses issued on or after April 1 of the fiscal year will not be assessed the annual fee for that fiscal year.

The proration provision in § 171.17 applicable to reactors is amended to provide that for licensees who have requested a license amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession-only license was issued or the license was terminated.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993 are subject to the FY 1994 annual fees.

#### Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1994 toward their FY 1994 annual fees. The NRC anticipates

that the first, second, and third quarterly payments for FY 1994 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, as necessary. As in FY 1993, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past three years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

#### V. Environmental Impact: Categorical Exclusion

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

#### VI. Paperwork Reduction Act Statement

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



## VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

- (1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;
- (2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;
- (3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;
- (4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;
- (5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and
- (6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1994 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that—

- (1) The annual fees be based on the Commission's FY 1994 budget of \$535.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;
- (2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and
- (3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors, the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

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

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

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

## VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1994. The final rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

## IX. Backfit Analysis

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

## List of Subjects

### 10 CFR Part 170

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

### 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

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



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

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

**Authority:** 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.3, the definition *special projects* is revised to read as follows:

**§ 170.3 Definitions.**

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

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

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

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

3. In § 170.11, a new paragraph (a)(9) is added to read as follows:

**§ 170.11 Exemptions.**

(a) \* \* \*

(9) State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term *research reactor* means a nuclear reactor that—

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

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

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

(B) A liquid fuel loading; or

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

4. 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 1994 budget is \$133 per hour.

5. In § 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised and a new footnote 4 is added to read as follows:

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

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

**SCHEDULE OF FACILITY FEES**

[See footnotes at end of table]

| Facility categories and type of fees                                                                                                                                                                       | Fees <sup>1 2</sup> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| J. Special Projects: <sup>4</sup>                                                                                                                                                                          |                     |
| Approvals and preapplication/licensing activities                                                                                                                                                          | Full Cost.          |
| Inspections <sup>3</sup>                                                                                                                                                                                   | Full Cost.          |
| K. Import and export licenses:                                                                                                                                                                             |                     |
| Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110. |                     |
| 1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).        |                     |
| Application-new license                                                                                                                                                                                    | \$8,600             |
| Amendment                                                                                                                                                                                                  | \$8,600             |
| 2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).         |                     |
| Application-new license                                                                                                                                                                                    | \$5,300             |
| Amendment                                                                                                                                                                                                  | \$5,300             |
| 3. Application for export of components requiring foreign government assurances only.                                                                                                                      |                     |
| Application-new license                                                                                                                                                                                    | \$3,300             |
| Amendment                                                                                                                                                                                                  | \$3,300             |
| 4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances.                                 |                     |
| Application-new license                                                                                                                                                                                    | \$1,300             |
| Amendment                                                                                                                                                                                                  | \$1,300             |



## SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

| Facility categories and type of fees                                                                                                                                            | Fees <sup>1, 2</sup> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review. |                      |
| Amendment .....                                                                                                                                                                 | \$130                |

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

<sup>2</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, 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 any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20. In no event will the total review costs be less than twice the hourly rate shown in §170.20.

<sup>4</sup> Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

6. 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 <sup>1</sup>                                                                                                                                                                                                                                                 | Fee <sup>2, 3</sup> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1. Special nuclear material:                                                                                                                                                                                                                                                                                 |                     |
| A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:             |                     |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                            | Full Cost.          |
| Inspections .....                                                                                                                                                                                                                                                                                            | Full Cost.          |
| B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):                                                                                                                                                                                                 |                     |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                            | Full Cost.          |
| Inspections .....                                                                                                                                                                                                                                                                                            | Full Cost.          |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: <sup>4</sup>                                                                                                             |                     |
| Application—New license .....                                                                                                                                                                                                                                                                                | \$570.              |
| Renewal .....                                                                                                                                                                                                                                                                                                | \$680.              |
| Amendment .....                                                                                                                                                                                                                                                                                              | \$360.              |
| Inspections .....                                                                                                                                                                                                                                                                                            | \$670.              |
| 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: <sup>4</sup> |                     |
| Application—New license .....                                                                                                                                                                                                                                                                                | \$600.              |
| Renewal .....                                                                                                                                                                                                                                                                                                | \$430.              |
| Amendment .....                                                                                                                                                                                                                                                                                              | \$330.              |
| Inspections .....                                                                                                                                                                                                                                                                                            | \$1,200.            |
| E. Licenses for construction and operation of a uranium enrichment facility.                                                                                                                                                                                                                                 |                     |
| Application .....                                                                                                                                                                                                                                                                                            | \$125,000.          |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                            | Full Cost.          |
| Inspections .....                                                                                                                                                                                                                                                                                            | Full Cost.          |
| 2. Source material:                                                                                                                                                                                                                                                                                          |                     |



## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Fee <sup>2,3</sup>    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: |                       |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |
| A.(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).                                                                                                                                                                                                                                                                                                                                                     |                       |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |
| A.(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).                                                                                                                                                                                                                                        |                       |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |
| B. Licenses which authorize only the possession, use and/or installation of source material for shielding:                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$230.                |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$160.                |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$270.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$560.                |
| C. All other source material licenses:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,500.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,400.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$450.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,500.              |
| 3. Byproduct material:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                       |
| A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:                                                                                                                                                                                                                                                                                                                                                         |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,700.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,700.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$470.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$9,800. <sup>5</sup> |
| 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 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,200.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$600.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$3,000. <sup>5</sup> |
| C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:                                                                                                                                                                                                                                                                                                                |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$3,500.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$3,000.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$490.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$3,400.              |
| D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:                                                                                                                                                                                                                                                                                                                      |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,300.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$550.                |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$370.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$3,000.              |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):                                                                                                                                                                                                                                                                                                                                                                                                      |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$930.                |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$760.                |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$330.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,200.              |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.                                                                                                                                                                                                                                                  |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,300.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,000.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$330.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,300.              |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.                                                                                                                                                                                                                                                    |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$5,300.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$4,800.              |



## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Fee <sup>2,3</sup>    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$640.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$4,100.              |
| H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:                                                                                                                                                                   |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,400.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,300.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$800.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,100.              |
| I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:                                                                                                                |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$4,600.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,700.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$1,100.              |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,000.              |
| J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:                                                                                                                                                                                |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,100.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,400.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$370.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,800.              |
| K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:                                                                                                                                     |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,000.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,400.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$270.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,000.              |
| L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                 |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$4,100.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,200.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$630.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$4,700.              |
| M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:                                                                                                                                                                                                                                                                                                                                                                                                  |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,400.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,500.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$690.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,200.              |
| N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:                                                                                                                                                                                                                                                        |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,700.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,100.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$680.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$2,400.              |
| O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:                                                                                                                                                                                                                                                                                                                                                                                                                                             |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$3,800.              |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$2,900.              |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$690.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$3,500. <sup>5</sup> |
| P. All other specific byproduct material licenses, except those in Categories 4A through 9D:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                       |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$570.                |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | \$680.                |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$360.                |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$1,500.              |
| 4. Waste disposal and processing:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                       |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material: |                       |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Full Cost.            |



## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                                                                                                                           | Fee <sup>2,3</sup> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | Full Cost.         |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:                                      |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$4,000.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$2,100.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$430.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$2,300.           |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:                                                                                   |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$1,500.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$1,100.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$250.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$2,800.           |
| 5. Well logging:                                                                                                                                                                                                                                                                                                                                                       |                    |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:                                                                                                                                                                |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$3,700.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$3,900.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$650.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$3,600.           |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies:                                                                                                                                                                                                                                                                            |                    |
| License, Renewal, Amendment .....                                                                                                                                                                                                                                                                                                                                      | Full Cost.         |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$1,300.           |
| 6. Nuclear laundries:                                                                                                                                                                                                                                                                                                                                                  |                    |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:                                                                                                                                                                                                                         |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$4,500.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$2,900.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$700.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$4,500.           |
| 7. Human use of byproduct, source, or special nuclear material:                                                                                                                                                                                                                                                                                                        |                    |
| A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:                                                                                                                                                          |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$3,700.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$1,200.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$560.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$2,300.           |
| 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 .....                                                                                                                                                                                                                                                                                                                                          | \$2,700.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$3,500.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$500.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$8,700.           |
| C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:                                                          |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$1,100.           |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$1,400.           |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$500.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$2,100.           |
| 8. Civil defense:                                                                                                                                                                                                                                                                                                                                                      |                    |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:                                                                                                                                                                                                                                   |                    |
| Application—New license .....                                                                                                                                                                                                                                                                                                                                          | \$670.             |
| Renewal .....                                                                                                                                                                                                                                                                                                                                                          | \$700.             |
| Amendment .....                                                                                                                                                                                                                                                                                                                                                        | \$480.             |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | \$1,100.           |
| 9. Device, product, or sealed source safety evaluation:                                                                                                                                                                                                                                                                                                                |                    |
| A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:                                                                                                                                                                                     |                    |
| Application—each device .....                                                                                                                                                                                                                                                                                                                                          | \$3,700.           |
| Amendment—each device .....                                                                                                                                                                                                                                                                                                                                            | \$1,300.           |
| Inspections .....                                                                                                                                                                                                                                                                                                                                                      | Full Cost.         |
| B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:                                                                                                                 |                    |
| Application—each device .....                                                                                                                                                                                                                                                                                                                                          | \$1,900.           |
| Amendment—each device .....                                                                                                                                                                                                                                                                                                                                            | \$670.             |



## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup>                                                                                                                                                                                                           | Fee <sup>2,3</sup> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:                                                                                                  |                    |
| Application—each source .....                                                                                                                                                                                                                                          | \$800.             |
| Amendment—each source .....                                                                                                                                                                                                                                            | \$270.             |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:                             |                    |
| Application—each source .....                                                                                                                                                                                                                                          | \$400.             |
| Amendment—each source .....                                                                                                                                                                                                                                            | \$130.             |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| 10. Transportation of radioactive material:                                                                                                                                                                                                                            |                    |
| A. Evaluation of casks, packages, and shipping containers:                                                                                                                                                                                                             |                    |
| Approval, Renewal, Amendment .....                                                                                                                                                                                                                                     | Full Cost.         |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| B. Evaluation of 10 CFR Part 71 quality assurance programs:                                                                                                                                                                                                            |                    |
| Application—Approval .....                                                                                                                                                                                                                                             | \$370.             |
| Renewal .....                                                                                                                                                                                                                                                          | \$280.             |
| Amendment .....                                                                                                                                                                                                                                                        | \$320.             |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| 11. Review of standardized spent fuel facilities:                                                                                                                                                                                                                      |                    |
| Approval, Renewal, Amendment .....                                                                                                                                                                                                                                     | Full Cost.         |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| 12. Special projects: <sup>6</sup>                                                                                                                                                                                                                                     |                    |
| Approvals and preapplication/licensing activities .....                                                                                                                                                                                                                | Full Cost.         |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| 13. A. Spent fuel storage cask Certificate of Compliance:                                                                                                                                                                                                              |                    |
| Approvals .....                                                                                                                                                                                                                                                        | Full Cost.         |
| Amendments, revisions, and supplements .....                                                                                                                                                                                                                           | Full Cost.         |
| Reapproval .....                                                                                                                                                                                                                                                       | Full Cost.         |
| B. Inspections related to spent fuel storage cask Certificate of Compliance .....                                                                                                                                                                                      | Full Cost.         |
| C. Inspections related to storage of spent fuel under § 72.210 of this chapter .....                                                                                                                                                                                   | Full Cost.         |
| 14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72 of this chapter:                                 |                    |
| Approval, Renewal, Amendment .....                                                                                                                                                                                                                                     | Full Cost.         |
| Inspections .....                                                                                                                                                                                                                                                      | Full Cost.         |
| 15. Import and Export licenses:                                                                                                                                                                                                                                        |                    |
| Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.                                                          |                    |
| A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).                                                                                   |                    |
| Application—New license .....                                                                                                                                                                                                                                          | \$8,600.           |
| Amendment .....                                                                                                                                                                                                                                                        | \$8,600.           |
| B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8). |                    |
| Application—New license .....                                                                                                                                                                                                                                          | \$5,300.           |
| Amendment .....                                                                                                                                                                                                                                                        | \$5,300.           |
| C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.                                                                                                                          |                    |
| Application—New license .....                                                                                                                                                                                                                                          | \$3,300.           |
| Amendment .....                                                                                                                                                                                                                                                        | \$3,300.           |
| D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.                                                                                                                      |                    |
| Application—New license .....                                                                                                                                                                                                                                          | \$1,300.           |
| Amendment .....                                                                                                                                                                                                                                                        | \$1,300.           |
| E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.                                                                                         |                    |
| Amendment .....                                                                                                                                                                                                                                                        | \$130.             |
| 16. Reciprocity:                                                                                                                                                                                                                                                       |                    |
| Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.                                                                                                                                           |                    |
| Application (initial filing of Form 241) .....                                                                                                                                                                                                                         | \$700.             |
| Renewal .....                                                                                                                                                                                                                                                          | N/A.               |
| Revisions .....                                                                                                                                                                                                                                                        | \$200.             |



## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees <sup>1</sup> | Fee <sup>2,3</sup>                                               |
|--------------------------------------------------------------|------------------------------------------------------------------|
| Inspections .....                                            | Fees as specified in appropriate fee categories in this section. |

<sup>1</sup> *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, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of \$125,000.

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

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

(d) *Amendment/Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 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*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. 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.

<sup>2</sup> Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections 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.

<sup>3</sup> 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 final rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993 rules, as appropriate. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

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

<sup>5</sup> 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.

<sup>6</sup> Fees will not be assessed for requests/reports submitted to the NRC:

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

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

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



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

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

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100-203, 101 Stat. 1330-275, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2132 as amended by Sec. 6101, Pub. L. 101-508, 104 Stat. 1388-298 (42 U.S.C. 2214); Sec. 301, Pub. L. 92-314, 86 Stat. 267 (42 U.S.C. 2201(w)); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 2903, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2214(c)).

8. In § 171.11, paragraph (a)(2) is revised to read as follows:

**§ 171.11 Exemptions.**

(a) \* \* \*

(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

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

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

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

(B) A liquid fuel loading; or

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

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

**§ 171.15 Annual fees: reactor operating licenses.**

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

(b) \* \* \*

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1994 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1994, are shown in paragraph (d) of this section.

(c) \* \* \*

(2) The FY 1994 surcharge to be added to each operating power reactor is \$273,000. This amount is calculated by dividing the total cost for these activities (\$29.5 million) by the number of operating power reactors (108).

(d) The FY 1994 Part 171 annual fees for operating power reactors are as follows:

**PART 171 ANNUAL FEES BY REACTOR CATEGORY<sup>1</sup>**

[Fees in thousands]

| Reactor vendor       | Number | Base fee | Added charge | Total fee | Estimated collections |
|----------------------|--------|----------|--------------|-----------|-----------------------|
| Babcock/Wilcox ..... | 7      | \$2,804  | \$273        | \$3,077   | \$21,539              |
| Combustion Eng. .... | 15     | 2,804    | 273          | 3,077     | 46,155                |
| GE Mark I .....      | 24     | 2,785    | 273          | 3,058     | 73,392                |
| GE Mark II .....     | 8      | 2,785    | 273          | 3,058     | 24,464                |
| GE Mark III .....    | 4      | 2,785    | 273          | 3,058     | 12,232                |
| Westinghouse .....   | 50     | 2,805    | 273          | 3,078     | 153,900               |
| Totals .....         | 108    |          |              |           | 331,682               |

<sup>1</sup>Fees assessed will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

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

Research reactor—\$62,200

Test reactor—\$62,200

\* \* \*

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

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

\* \* \*

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1994 as follows:

|                                                                                  | Maximum annual fee per licensed category |
|----------------------------------------------------------------------------------|------------------------------------------|
| Small businesses and small not-for-profit organizations (gross annual receipts): |                                          |
| \$250,000 to \$3.5 million .....                                                 | \$1,800                                  |
| Less than \$250,000 .....                                                        | 400                                      |
| Private practice physicians (gross annual receipts):                             |                                          |
| \$250,000 to \$1.0 million .....                                                 | 1,800                                    |

|                                                                                                         | Maximum annual fee per licensed category |
|---------------------------------------------------------------------------------------------------------|------------------------------------------|
| Less than \$250,000 .....                                                                               | 400                                      |
| Small governmental jurisdictions (including publicly supported educational institutions) (population):  |                                          |
| 20,000 to 50,000 .....                                                                                  | 1,800                                    |
| Less than 20,000 .....                                                                                  | 400                                      |
| Educational institutions that are not state or publicly supported, and have 500 employees or less ..... | 1,800                                    |

\* \* \*

(4) For FY 1994, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is \$1,800 for each category applicable to the licensee(s).







|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 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                                                                                                                                                | 6,000     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)                                                                                                                                                                                                                                                                                                                                                                                                      | 3,500     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes                                                                                                                                                                                                                                               | 4,500     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes                                                                                                                                                                                                                                                 | 24,400    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter                                                                                                                                                                   | 6,800     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| 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                                                                                                                | 12,500    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| 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                                                                                                                                                                                | 6,600     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| 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                                                                                                                                     | 6,100     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Part 30 and 33 of this chapter for research and development that do not authorize commercial distribution                                                                                                                                                                                                                                                                                                                                                                                  | 14,700    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| 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                                                                                                                                                                                                                                                                                                                                                                                                  | 5,100     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D                                                                                                                                                                                                                                                        | 6,000     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| 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                                                                                                                                                                                                                                                                     | 19,000    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| P. All other specific byproduct material licenses, except those in Categories 4A through 9D                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2,300     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| 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 | 5 130,200 |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| 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                                                                                                                                                                                                                                                      | 16,400    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| 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                                                                                                                                                                                                                                                                                                   | 7,500     |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| 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                                                                                                                                                                                                                                                                                                                                                                                | 12,700    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 170       |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 15,400    |
| Surcharge                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1,670     |
| 6. Nuclear laundries:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |           |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material                                                                                                                                                                                                                                                                                                                                                                                                                                         | 15,600    |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 1,670                 |
| 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 .....                                                                                                                                                                      | 16,900                |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 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 <sup>9</sup> ..... | 30,900                |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 1,670                 |
| 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 <sup>9</sup> .....                                                          | 5,900                 |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 8. Civil defense:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                       |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities .....                                                                                                                                                                                                                                                                                                                                                                        | 2,100                 |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 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 .....                                                                                                                                                                                                                                                                                             | 9,600                 |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices .....                                                                                                                                                                                                                         | 4,900                 |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 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 .....                                                                                                                                                                                                                                                                                                          | 2,100                 |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 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 .....                                                                                                                                                                                                                                     | 1,000                 |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 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 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <sup>a</sup> N/A      |
| Other Casks .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <sup>a</sup> N/A      |
| B. Approvals issued of 10 CFR Part 71 quality assurance programs.                                                                                                                                                                                                                                                                                                                                                                                                                                                |                       |
| Users and Fabricators .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 64,700                |
| Users .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 900                   |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 11. Standardized spent fuel facilities .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <sup>b</sup> N/A      |
| 12. Special Projects .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <sup>b</sup> N/A      |
| 13. A. Spent fuel storage cask Certificate of Compliance .....                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <sup>b</sup> N/A      |
| B. General licenses for storage of spent fuel under 10 CFR 72.210 .....                                                                                                                                                                                                                                                                                                                                                                                                                                          | 363,500               |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |
| 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 .....                                                                                                                                                                                                                                                                                      | <sup>7</sup> N/A      |
| 15. Import and Export licenses .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <sup>b</sup> N/A      |
| 16. Reciprocity .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <sup>b</sup> N/A      |
| 17. Master materials licenses of broad scope issued to Government agencies .....                                                                                                                                                                                                                                                                                                                                                                                                                                 | 430,500               |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 22,970                |
| 18. Department of Energy:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                       |
| a. Certificates of Compliance .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <sup>10</sup> 923,000 |
| b. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities .....                                                                                                                                                                                                                                                                                                                                                                                                                                         | 1,449,000             |
| Surcharge .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 170                   |

<sup>1</sup> Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licensees and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1993 and permanently ceased licensed activities entirely by September 30, 1993. Annual fees for licensees who filed for termination of a license or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license and licensees paying annual fees under Category 2.A.(2) are not subject to the annual fees for Category 2.A.(4).

<sup>2</sup> 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.

<sup>3</sup> For FYs 1995 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

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

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



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

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

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

<sup>9</sup> 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.

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

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

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

(1) To recover costs relating to LLW disposal generic activities, an additional charge of \$55,600 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$1,500 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of \$22,800 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of \$170 has been added to each fee Category, except Categories 1.E., 10.A., 11., 12., 13.A., 14., 15., and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the \$170 additional charge.

11. Section 171.17 is revised to read as follows:

#### § 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors. The annual fee for reactors (power or nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a FY is prorated on the basis of the number of days remaining in the FY. Thereafter, the full fee is due and payable each subsequent FY. Licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before the possession only license was issued or the license was terminated.

(b) Materials licenses (including fuel cycle licenses). The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will

not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

12. In section 171.19, paragraphs (b) and (c) are revised to read as follows:

#### § 171.19 Payment.

\* \* \* \* \*

(b) For FY 1994 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1994 through 1998, annual fees in the amount of \$100,000 or more and described in the **Federal Register** notice pursuant to § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than \$100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of July, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

#### Appendix A to This Final Rule— Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

##### I. Background.

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

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

(1) A small business is a business with annual receipts of \$3.5 million or less except private practice physicians for which the standard is annual receipts of \$1 million or less.

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

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

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



Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA-90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately \$445 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million and the amount to be collected in FY 1994 is approximately \$513 million.

To comply with OBRA-90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the fees to be assessed for FY 1994 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1994 final rule.

## II. Impact on small entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993 and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the

NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991, FY 1992, and FY 1993 fee rules. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

- Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.
- Some firms would be forced to cancel their licenses. One commenter, with receipts of less than \$500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.
- Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.
- Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would

significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past three years, approximately 2,600 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the \$3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991), in the FY 1992 rule (57 FR 32691; July 23, 1992), and in the FY 1993 rule (58 FR 38666; July 20, 1993). The alternatives considered by the NRC can be summarized as follows.

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

The NRC has reexamined the FY 1991, FY 1992, and FY 1993 evaluation of these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1994, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic



impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1994, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to contain a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees, or any adjustments to these fees during the past year, do not have a significant impact on them. In issuing this final rule for FY 1994, the NRC concludes that the materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of \$1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1994 costs (\$33.3 million of the total \$38.6 million) attributable to them. Therefore, the NRC is continuing, for FY 1994, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of \$1,800 for small entities, when added to the Part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992 and FY 1993, the NRC will continue the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts for FY 1994. This lower-tier small entity fee was established in the final rule published in the *Federal Register* on April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA-90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay,

relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of \$400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than \$250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

### III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower tier small entity annual fee of \$400 for small businesses and non-profit organizations with gross annual receipts of less than \$250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, the FY 1992, and the FY 1993 fee rules in this final rule establishing the FY 1994 fees. Therefore, the analysis and conclusions established in the FY 1991, the FY 1992, and the FY 1993 rules remain valid for this final rule for FY 1994.

[FR Doc. 94-17502 Filed 7-19-94; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-ANE-07; Amendment 39-8972; AD 94-15-01]

#### Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines. This action requires a one-time ultrasonic inspection of a suspect population of propeller shafts for metallurgical defects, and if necessary, replacement with a serviceable part. This amendment is prompted by a report of an inflight propeller separation due to a metallurgical defect. The actions specified in this AD are intended to prevent failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

**DATES:** Effective August 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 19, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-07, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7130, fax (617) 238-7199.



**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) has determined that certain propeller shafts on General Electric Aircraft Engines (GE) CT7 series turboprop engines may have a metallurgical defect that could cause separation of the propeller from the propeller shaft. The FAA's investigation has revealed this population of propeller shafts may contain a metallurgical defect known as a pipe inclusion, which developed during manufacture of the shaft. This defect typically forms during the process of melting the ingot used to form the shaft and positions itself at either end of the ingot. During this phase of the manufacturing process cropping both ends of the ingot normally ensures complete removal of such defects. The FAA has determined, however, that for five heat lots of material, pipe inclusions may not have been completely removed from the material used to form the propeller shaft. The FAA has determined that suspect material was used to manufacture approximately 326 propeller shafts.

The FAA received a report of a propeller separating from a SAAB-SCANIA SF340 series aircraft inflight following severe vibration. The FAA's investigation revealed that the propeller shaft separated due to a pipe inclusion defect positioned in a high stress location of the propeller shaft. That defect initiated a crack which propagated to failure. This condition, if not corrected, could result in failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE (CT7-TP Series) Service Bulletin (SB) No. A72-350, Revision 3, dated June 9, 1994, that describes procedures for a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for detection of subsurface defects. In addition, Table 3 of this SB lists by propeller gearbox serial number (S/N) a certain population of suspect propeller shafts to be identified by internal markings during a one-time borescope inspection. Those propeller shafts with markings identified as suspect in accordance with this SB must be ultrasonically inspected prior to further flight.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CT7 series turboprop engines of the same type design, this airworthiness directive (AD) is being issued to prevent separation of

the propeller from the propeller shaft, which could result in damage to the aircraft. This AD requires a one-time ultrasonic inspection of the propeller shaft flange OD fillet radius and ID bore on a suspect population of propeller shafts for subsurface metallurgical defects, and if necessary, replacement with a serviceable part. This inspection must be performed at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. The FAA has determined that the compliance end-date of October 31, 1994, will be necessary to ensure timely inspection of all propeller shafts and thus minimize the potential for additional propeller shaft failures. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-ANE-07." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**94-15-01 General Electric Aircraft Engines:** Amendment 39-8972. Docket 94-ANE-07.

**Applicability:** General Electric Aircraft Engines (GE) Models CT7-5A2, -5A3, -7A,



-7A1, -9B, -9B1, -9B2, -9C, -9D turboprop engines, with propeller gearboxes listed by serial number in GE (CT7-TP Series) Service Bulletin (SB) No. A72-350, Revision 3, dated June 9, 1994. These engines are installed on but not limited to Construcciones Aeronauticas, SA (CASA) CN-235 series and SAAB-SCANIA SF340 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft, accomplish the following:

(a) Perform a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for subsurface metallurgical defects, and replace, if necessary, with a serviceable part, at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. Perform the ultrasonic inspection, and replacement, if necessary, in accordance with GE (CT7-TP Series) SB No.

A72-350, Revision 3, dated June 9, 1994, on propeller shafts listed by propeller gearbox serial number (S/N) in Table 2 of that SB.

(b) Perform a one-time borescope inspection to identify all markings on the propeller shaft at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. Perform the borescope inspection in accordance with GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994, on propeller shafts listed by propeller gearbox S/N in Table 3 of that SB, and before further flight, proceed as follows:

(1) For those propeller shafts that are determined to be suspect, perform a one-time ultrasonic inspection, and replace, if necessary with serviceable parts, in accordance with the Accomplishment Instructions of GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994.

(2) For those propeller shafts that are determined not to be suspect, no further action is required.

(c) For the purpose of this AD, a shop visit is defined as the induction of the engine into

the shop for maintenance, or separation of the propeller for maintenance.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The inspections, and replacement, if necessary, shall be done in accordance with the following service document:

| Document No.                      | Pages | Revision | Date          |
|-----------------------------------|-------|----------|---------------|
| GE (CT7-TP Series) SB No. A72-350 | 1-40  | 3        | June 9, 1994. |

Total pages: 40.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 4, 1994.

Issued in Burlington, Massachusetts, on July 8, 1994.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-17328 Filed 7-19-94; 8:45 am]

BILLING CODE 4910-13-P

#### 14 CFR Part 39

[Docket No. 93-NM-216-AD; Amendment 39-8973; AD 94-15-02]

#### Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD),

applicable to certain McDonnell Douglas Model MD-11 series airplanes, that currently requires inspections to verify the installation of shear pins, shear pin retainers, and shear pin retainer attaching parts in the aft end of the center pylon thrust link, and repair, if necessary. That AD was prompted by a report that both shear pins that attach the aft end of the center engine pylon thrust link to the tail pylon were missing. This amendment adds inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; and adds a terminating modification for those inspections. This amendment also expands the applicability of the rule to include additional airplanes. The actions specified by this AD are intended to prevent structural damage to the engine mount structure, which could lead to loss of airplane components.

**DATES:** Effective August 19, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of August 19, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992, as listed in the regulations, was previously approved by the Director of the Federal Register of November 2, 1992 (57 FR 47991, October 21, 1992).

**ADDRESSES:** The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5324; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92-23-03, amendment 39-8403 (57 FR 47991, October 21, 1992), which is applicable to certain McDonnell Douglas Model MD-11 series airplanes, was published in the Federal Register on March 17, 1994 (59 FR 12558). The action proposed to continue to require repetitive visual inspections to verify



the installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in the aft end of the center engine (No. 2) pylon thrust link. It also proposed (1) to add repetitive inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; (2) to delete the previously provided "optional terminating action" (which consists of a one-time verification for tightness of the nuts of the four shear pin retainer attaching bolts); and (3) to require eventual replacement of the existing retainer and attaching parts with a new retainer and attaching parts, as terminating action for the currently required repetitive visual inspections and the proposed repetitive verifications of tightness.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

The Air Transport Association (ATA) of America, on behalf of one member operator, and the manufacturer request that the proposed AD be revised to indicate that the 60-day repetitive inspection specified in paragraph (a) and (b) be required only until either the initial verification for tightness (of the shear pin retainer attaching parts), the terminating action, or an FAA-approved repair is accomplished. These commenters state that the FAA already has approved repairs applicable to paragraphs (a) and (b) of the proposal, which have consisted of the installation of new parts. New parts obviously will be tightened upon installation; therefore, reinspection of the tightness of these parts within 60 days appears to be unwarranted. The commenters request that the repetitive interval for the inspection for installation of parts be revised to 18 months in order to be consistent with the recommendations of Phase 2 of the original issue of McDonnell Douglas Alert Service Bulletin A54-71.

The FAA concurs in part with the commenter's request. Upon further consideration of the procedures specified in the referenced service bulletin, the FAA concurs that a 60-day repetitive inspection interval is not necessary in certain situations, explained as follows:

Paragraphs (a)(1) and (b)(1)(i) of the final rule apply to situations where the shear pins, shear pin retainers, and shear pin retainer attaching parts have been inspected and found to be installed. The FAA finds that inspections to verify the installation of

these parts must be repeated every 60 days, so long as there is no other action accomplished that will ensure the tightness of the attaching parts. These inspections for installation may be terminated, however, when the initial verification for tightness of the shear pin retainer attaching parts is accomplished in 18 months in accordance with paragraph (c) of the rule; or when the terminating modification described in paragraph (d) is installed, if earlier than 18 months.

The FAA has revised paragraphs (a)(2) and (b)(1)(ii) of the final rule, which apply to situations where any shear pin is missing or has migrated, and any shear pin retainer or shear pin retainer attaching part is missing. In such cases, an FAA-approved repair is required to be installed; the FAA has determined that these approved repairs will be such that no further inspections for installation of parts will be necessary once the approved repair is installed. The FAA has revised these paragraphs of the final rule to reflect this determination.

Additionally, the FAA has added new paragraphs (a)(3) and (b)(1)(iii), which specify that, in situations where the shear pin retainers or shear pin retainer attaching parts are missing or loose, and the shear pin has not migrated, operators may accomplish a repair in accordance with procedures specified as "Condition II" in McDonnell Douglas Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993. Subsequent to this repair, no further inspections for installation of parts are required. These paragraphs have been added in order to provide operators with an additional repair procedure that may be used in lieu of obtaining prior FAA-approval of repairs (which was the only option provided for in the proposal).

These same commenters contend that the 15-day compliance time for the initial inspection required by proposed paragraph (b) is not warranted for certain airplanes. The commenters point out that a tightness check was accomplished on airplanes in Groups V and VI (as specified in the referenced McDonnell Douglas service bulletin) prior to delivery; therefore, an initial inspection for installation of the subject parts should not be required for these airplanes. The commenters request that, for these airplanes, only a "re-verification" for tightness be required within 18 months. Additionally, the commenters point out that an initial visual inspection for installation of parts was accomplished on airplanes in Group III and IV prior to delivery; therefore, the compliance time for initial inspection for installation of parts

required by this proposed rule should be extended. The commenters suggest extending the initial compliance time to 60 days, since this is the compliance time recommended by the manufacturer in the referenced service bulletin.

The FAA concurs in part with the commenter's requests. The FAA acknowledges that it is appropriate to revise paragraph (b) of the final rule to differentiate between the requirements of the various groups of airplanes specified in the referenced service bulletin:

As for airplanes in Groups III and IV, the FAA does not concur with the commenter's request to extend the initial compliance time for the inspection for installation of parts on these airplanes. While these airplanes may have been inspected prior to delivery, and while the manufacturer's revised service bulletin recommends a repetitive inspection interval of 60 days, the FAA points out that the inspection procedures described in that service bulletin have not been mandated previously. Since the revised service bulletin was released over a year ago, there is no way to guarantee that affected airplanes have been repetitively inspected prior to the issuance of this final rule. In light of this, the FAA considers a compliance time of 15 days necessary in order to ensure that the accomplishment of what may be the first repetitive inspection for some airplanes is carried out in a timely manner. However, the FAA has revised the compliance terms of paragraph (b)(1) to provide a "grace period" for operators of airplanes that may have been visually (re-)inspected recently. The final rule now reflects a compliance time for the initial visual inspection as "within 15 days after the effective date of the AD, or prior to the accumulation of 60 days since the last visual inspection, whichever occurs later."

As for airplanes in Groups V and VI, the FAA concurs that these airplanes need not be subject to the initial inspection for installation of parts as required by paragraph (b), as long as repetitive verifications for tightness are conducted. Therefore, the FAA has revised paragraph (b) by adding a new paragraph (b)(2), which addresses these airplanes and allows them the option of either repetitively inspecting for installation of parts (as originally proposed), or conducting a verification for tightness within 18 months after the last verification was performed. If operators of these airplanes elect to perform the verification for tightness, it must be repeated every 18 months until the terminating modification is



accomplished in accordance with paragraph (d) of the rule.

These same commenters request that proposed paragraph (c) be revised to indicate that accomplishment of the verification for tightness of the shear pin retainer attaching parts terminates the requirement for the repetitive visual inspections for installation of these same parts required by paragraph (a) and (b). The FAA concurs and has revised paragraph (c) of the final rule accordingly.

These commenters also request that proposed paragraph (d) be revised to extend the compliance time for accomplishment of the terminating modification from the proposed 3 years to 5 years. The commenters consider this modification to be only an "improvement change," and operators should be allowed to install it during a convenient and regularly scheduled maintenance period in order to avoid special scheduling of airplanes and additional associated costs. The FAA does not concur. In developing the compliance time for the terminating action, the FAA considered not only the safety implications, but the manufacturer's recommendations, the availability of required modification parts, and the practical aspects of an orderly modification of the fleet. In consideration of all of these items, the FAA determined that 3 years is an appropriate interval that will coincide with regularly scheduled maintenance periods ("C" checks) for the majority of the affected operators. However, under the provisions of paragraph (f) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 94 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD.

Accomplishment of the required inspections for installation of parts will take approximately 4 work hours per airplane, at an average labor rate of \$55 per work hour. Based on these figures, the total cost impact of these requirements of this AD on U.S.

operators is estimated to be \$9,240, or \$220 per airplane, per inspection.

Accomplishment of the required verification for tightness of the shear pin retainer attaching parts will take approximately 6 work hours per airplane, at an average labor rate of \$55 per work hour. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be \$13,860, or \$330 per airplane, per verification.

Accomplishment of the required terminating modification will take approximately 6 work hours per airplane, at an average labor rate of \$55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be \$13,860, or \$330 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8403 (57 FR 47991, October 21, 1992), and by adding a new airworthiness directive (AD), amendment 39-8973, to read as follows:

94-15-02 McDonnell Douglas: Amendment 39-8973. Docket 93-NM-216-AD. Supersedes AD 92-23-03, Amendment 39-8403.

Applicability: Model MD-11 series airplanes; as listed in McDonnell Douglas MD-11 Alert Service Bulletin A54-31, dated September 17, 1992, and McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the engine mount structure, which could lead to loss of airplane components, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD-11 Alert Service Bulletin A54-31, dated September 17, 1992: Within 15 days after November 5, 1992 (the effective date of AD 92-23-03, amendment 39-8403), unless previously accomplished within the last 30 days, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, dated September 17, 1992, or Revision 1, dated June 3, 1993.

(1) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(2) If any shear pin retainer or shear pin retainer attaching part is missing or loose, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(3) If any shear pin retainer or shear pin retainer attaching part is missing or loose, and if no shear pin has migrated, prior to further flight, repair in accordance with "Condition II" of McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1994.

(b) For airplanes listed in McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993, and not subject to the requirements of paragraph (a) of this AD, accomplish the following:

(1) For airplanes specified as Groups III and IV in that service bulletin: Within 15 days after the effective date of this AD or



prior to the accumulation of 60 days since the last visual inspection performed before the effective date of this AD in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993, or equivalent, whichever occurs later, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993.

(i) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(ii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(iii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if no shear pin has migrated, prior to further flight, repair in accordance with "Condition II" of McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993.

(2) For airplanes specified as Groups V and VI in that service bulletin: Accomplish the procedures specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Accomplish the visual inspection(s) and necessary follow-on procedures specified in paragraph (b)(1) of this AD, or

(ii) Prior to the accumulation of 18 months since the last verification for tightness of the shear pin retainer parts was accomplished, or within 6 months after the effective date of this AD, whichever occurs later, verify that the tightness of the shear pin retainer parts is within the limits specified in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993. Repeat the verification for tightness thereafter at intervals not to exceed 18 months until the accomplishment of paragraph (d) of this AD.

(c) For all airplanes, except those subject to paragraph (b)(2)(ii) of this AD: Within 18 months after the effective date of this AD, verify that the tightness of the shear pin retainer attaching parts is within the limits specified in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993. Repeat this verification thereafter at intervals not to exceed 18 months until accomplishment of paragraph (d) of this AD. Accomplishment of the verification for tightness required by this paragraph constitutes terminating action for the repetitive inspections for installation of parts required by paragraphs (a) and (b) of this AD.

(d) For all airplanes: Within 3 years after the effective date of this AD, replace the existing retainer and bolts with safety wire with a new retainer and new bolts with safety wire in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993.

Accomplishment of this replacement constitutes terminating action for the repetitive actions required by paragraphs (a), (b) and (c) of this AD.

(e) Within 15 days after detecting any discrepancy during any inspection or verification action required by this AD, submit a report of the inspection results to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; fax (310) 988-5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A54-31, dated September 17, 1992; and McDonnell Douglas MD-11 Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993. The incorporation by reference of the former service bulletin was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of November 2, 1992 (57 FR 47991, October 21, 1992). The incorporation by reference of the latter service bulletin was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 19, 1994.

Issued in Renton, Washington, on July 11, 1994.

**Darrell M. Pederson,**

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 94-17196 Filed 7-19-94; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 173

[Docket No. 78G-0027]

### Secondary Direct Food Additives Permitted in Food for Human Consumption; Cellulose Triacetate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its food additive regulations to provide for the safe use of cellulose triacetate as an immobilizing agent for lactase for use in reducing the lactose content of milk. This action is in response to a petition filed by Vitenco, Inc.

**DATES:** Effective July 20, 1994; written objections and requests for a hearing by August 19, 1994.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS-207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of March 17, 1978 (43 FR 11266), FDA announced that a generally recognized as safe (GRAS) affirmation petition (GRASP 7G0088) had been filed by Vitenco, Inc., 594 Marett Rd., Lexington, MA 02173, requesting that lactase from *Kluyveromyces (Saccharomyces) lactis* entrapped in cellulose triacetate fibers be affirmed as GRAS for use in reducing the lactose content of milk. Subsequent to the filing of this petition, FDA affirmed, in response to a separate petition (GRASP 6G0077), that lactase enzyme from *K. lactis* is GRAS for this use (21 CFR 184.1388) (49 FR 47384 at 47387, December 4, 1984). Therefore, this document deals only with the use of cellulose triacetate as an immobilizing agent and with any potential contaminants that might be introduced into food from this use.

Although the information submitted in GRASP 7G0088 allows the agency to conclude that the use of cellulose triacetate as an immobilizing agent is safe, the petition did not establish that the critical data are generally available as required by 21 CFR 170.30(b). Consequently, the agency has evaluated