

Proposed Rules

Federal Register

Vol. 62, No. 39

Thursday, February 27, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AF 55

Revision of Fee Schedules; 100% Fee Recovery, FY 1997

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1997 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1997 is approximately \$462.3 million.

DATES: The comment period expires March 31, 1997. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90 requires that NRC collect the FY 1997 fees by September 30, 1997, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telephone 301-415-1678). Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001. For information on submitting comments electronically, see the discussion under Electronic Access

in the Supplementary Information Section.

The agency workpapers that support these proposed 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 20555-0001.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Proposed Action.
- III. Section-by-Section Analysis.
- IV. Electronic Access.
- 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 FY 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. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established 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.

On April 12, 1996 (61 FR 16203), the NRC published its final rule establishing the licensing, inspection, and annual

fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1996, less the appropriation received from the Nuclear Waste Fund. Several changes to the fees assessed for FY 1996 were adopted by the NRC. These changes were highlighted in the final rule (61 FR 16203; April 12, 1996) and bear on the approach for establishing annual fees set forth in this proposed rule.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1997 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1997, the NRC's budget authority is \$476.8 million, of which \$11.0 million has been appropriated from the NWF. In addition, \$3.5 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site. The FY 1997 appropriation statute states that the \$3.5 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately \$462.3 million in FY 1997 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

The total amount to be recovered for FY 1997, and therefore the total fees, is the same as the amount estimated for recovery for FY 1996. However, the distribution of the total amount to be collected between the two types of fees is different. The NRC estimates that approximately \$96 million would be recovered in FY 1997 from fees assessed under 10 CFR part 170 and other receipts compared to \$120.5 million in FY 1996. The remaining \$366.3 million in FY 1997 would be recovered through the 10 CFR part 171 annual fees. Because the 10 CFR part 170 fees and other offsetting receipts for FY 1997 is below the estimate for FY 1996, annual fees must increase. The lower estimate for 10 CFR part 170 fees plus other changes cause an 8.2 percent increase in FY 1997 annual fees compared to FY

1996. These changes are more fully explained in Section B. The following examples illustrate the changes in annual fees.

	FY 1996 annual fee	FY 1997 proposed annual fee
Class of Licenses:		
Power reactors	\$2,746,000	\$2,972,000
Nonpower reactors	52,800	57,200
High enriched uranium fuel facility	2,403,000	2,600,000
Low enriched uranium fuel facility	1,179,000	1,276,000
UF ₆ conversion facility	597,800	647,000
Uranium mills	57,000	61,600
Typical materials licenses:		
Radiographers	13,000	14,000
Well loggers	7,500	8,200
Gauge users	1,600	1,700
Broad scope medical	21,700	23,500

Because the final FY 1997 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1997 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee upon publication of the FY 1997 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1997 final rule would be billed at the FY 1997 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

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

The NRC proposes three amendments to 10 CFR part 170 and one change in practice under part 170. These amendments would not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also

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

First, the NRC is proposing to amend § 170.11 of the Commission's fee regulations to add an exemption provision for those amendments to materials portable gauge licenses referencing NUREG 1556 that would change only the name of the Radiation Safety Officer (RSO). This proposed change is consistent with the proposed regulatory approach outlined in draft NUREG-1556, Volume 1, entitled "Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Portable Gauge Licenses" issued October 3, 1996, for public comment. No amendment fees would be assessed for the amendments to portable gauge licenses because the regulatory program proposed in the final NUREG-1556, Volume 1, would include commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application, then a technical review is not required. The NRC expects NUREG 1556 to be finalized before the final fee rule becomes effective. If not, then this proposed change will not be included in the final fee regulation.

Second, the NRC proposes that the two professional hourly rates established in FY 1996 in § 170.20 be revised based on the FY 1997 budget. These proposed rates would be based on the FY 1997 direct FTEs and that portion of the FY 1997 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF or the General Fund. These rates are used to determine the part 170 fees. The NRC is proposing to establish a rate of \$131 per hour (\$233,055 per direct FTE) for the reactor program. This rate would be applicable to all activities whose fees are based on full cost under § 170.21 of the fee regulations. A second rate of \$125 per hour (\$222,517 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate would be applicable to all materials activities whose fees are based on full cost under § 170.31 of the fee regulations. In the FY 1996 final fee rule, these rates were \$128 and \$120 respectively.

The two rates are based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing

cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Third, the NRC proposes to adjust the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license and amendment) for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1995. The proposed licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed nuclear materials professional hourly rate for FY 1997 of \$125 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1995 (60 FR 32218; June 20, 1995). For new materials licenses, the proposed licensing fees for FY 1997 are increased in approximately 70 percent of the categories, while the proposed fees for materials amendments would increase in over 60 percent of the categories.

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§ 50.54, 50.59 and 70.32. The NRC is announcing here that licensees would be billed for post-implementation review of these changes under §§ 170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions, including any review prior to licensee submissions, between NRC and licensees. As in the past, any pre-implementation interaction should not

be fee bearing. It is noted the NRC plans to inform reactor licensees in the near future that their submittals under § 50.54 (a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of § 50.54. The NRC will then verify that the changes are in compliance with § 50.54.

In summary, the NRC is proposing to:

- (1) Revise the two 10 CFR part 170 hourly rates;
- (2) Revise the licensing (application and amendment) fees assessed under 10 CFR part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service;
- (3) Add a provision to the regulations exempting from 10 CFR part 170 fees certain amendments to materials portable gauge licenses issued in accordance with NUREG-1556; and
- (4) Charge under part 170 for post-implementation quality assurance plan, safeguards contingency plan and emergency plan changes

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

The NRC proposes six amendments to 10 CFR part 171. First, the NRC proposes to amend § 171.13 to revise the language to indicate that if the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC would continue to assess fees on the same basis as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991. However, as a contingency the NRC believes the rule should be amended to permit NRC to meet the requirements of OBRA-90 in the case that unforeseen events prevent NRC from publishing a new rule during a fiscal year.

Second, the NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1997 to recover approximately 100 percent of the FY 1997 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would

adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR part 170 fees and other adjustments as well as on the number of licensees paying the fees.

In the FY 1996 final rule, the NRC stabilized the annual fees by establishing the annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. In this FY 1997 proposed rule, the NRC intends to follow the same method as used in FY 1996. Because the total amount estimated for recovery through fees in FY 1997 is identical to the amount to be recovered in FY 1996, establishing new baseline fees is not warranted for FY 1997. While the total amount collected is the same, the distribution between part 170 and 171 fees would change. In FY 1996, 26% was estimated to be collected from 10 CFR part 170 fees. This decreases to 21% in FY 1997. Therefore, to recover 100 percent of the budget, 10 CFR part 171 annual fees must increase in FY 1997 compared to FY 1996. The NRC is establishing the FY 1997 annual fees for all licensees at a level of 8.2 percent above the FY 1996 annual fees. The 8.2 percent increase results primarily from a reduction in the amount of the budget recovered for 10 CFR part 170 fees, a reduction in other offsetting adjustments, and reduction in the number of licensees paying annual fees. In addition, the NRC has made adjustments to recognize that all fees billed in a fiscal year are not collected in that year. Table I shows the total budget and amounts of fee billed and collected for FY 1996 and FY 1997.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1996 ANNUAL FEES
[Dollars in millions]

	FY96	FY97
Total Budget	\$473.3	\$476.8
Less NWF	-11.0	-11.0
Less General Fund (Hanford Tanks)		-3.5
Total Fee Base	462.3	462.3
Less Part 170 Fees	114.5	96.0
Less other receipts	16.0
Part 171 Fee Collections Required	341.8	366.3

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1996 ANNUAL FEES—Continued
[Dollars in millions]

	FY96	FY97
Part 171 Billing Adjustments: ²
Small Entity Allowance	4.9	5.0
Unpaid FY 1997 bills		3.0
Payments from prior year bills		2.0
Subtotal	4.9	6.0
Total Part 171 Billing	346.7	372.3

¹ \$6 million in excess collections from FY 1995 were available to reduce FY 1996 annual fees.

² These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1997.

As shown in Table I, the total amount of annual fees to be billed in FY 1997 is \$25.6M (\$372.3-\$346.7) or 7.4 percent higher than the amount that was to be billed in annual fees in FY 1996. The NRC notes that the reduction in the estimates of 10 CFR part 170 fees for FY 1997 is primarily in the areas relating to the review of applications for reactor operating licenses and the review of standard plant applications. In addition, for the first time the estimates take into consideration an allowance for bad debt by estimating billings in the fiscal year that are not projected to be collected in that fiscal year and collections received in the current fiscal year as a result of billings from a prior fiscal year. These adjustments to the annual fees will allow the NRC to come closer to meeting its obligation to recover approximately 100 percent of its budget authority through the assessment of fees.

In addition to changes in 10 CFR part 170 fees and other adjustments, the number of licensees to pay fees in FY 1997 has decreased compared to FY 1996. This decrease in the number of licensees paying fees causes annual fees to increase by an additional 0.8 percent. For example, the Haddam Neck power reactor has ceased operations and the fuel has been permanently removed from the reactor. Therefore, the utility will pay only a partial annual fee in FY 1997. In addition, Massachusetts is expected to become an Agreement State in FY 1997 and approximately 425 NRC licenses will be transferred to Massachusetts. These licenses are projected to pay only one half of the annual fee.

Third, an annual fee is proposed in § 171.16(d), fee Category I.E., for each certificate of compliance issued to the United States Enrichment Corporation (USEC) on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky and at Piketon, Ohio. The NRC intends to assume regulatory jurisdiction over the two plants from the U.S. Department of Energy (DOE) on March 3, 1997.

Fourth, Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of annual fees for FY 1997 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 before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to FY 1997 annual fees. This change is being made in recognition of the fact that since the final FY 1996 rule was published in April 1996, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1996 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 such requests before the end of the fiscal year on September 30, 1996. Similar situations existed after the FY 1991–1995 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fifth, the NRC is proposing to amend the proration provisions in § 171.17 for reactor and materials licensees. The reactor provision in § 171.17(a) would be revised to reflect the changes in 10 CFR part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). The materials provision would be amended to recognize that licenses transferred to an Agreement State as a result of a new Agreement are effectively terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective.

Sixth, § 171.19 would be amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1997 either toward their total annual fee to be

assessed or to make refunds, if necessary. This section would also be amended to modify the annual fee billing schedule for materials licenses terminated and new materials licenses issued during the fiscal year.

The NRC will send a bill to reactors and major fuel cycle facilities for the amount of the annual fee upon publication of the FY 1997 final rule. For these licensees, payment will be due on the effective date of FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1997 rule would be billed, at the FY 1997 revised rates, during the anniversary month of the license and payment would be due on the date of the invoice.

The proposed amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The proposed changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996–1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

III. Section-by-Section Analysis

The following analysis of those sections that would be amended by this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section would be amended to add a new paragraph indicating that amendments to materials portable gauge licenses issued in accordance with NUREG 1556 that change only the name of the Radiation Safety Officer (RSO) would be exempt from amendment fees. This change is consistent with the recent Business Process Redesign (BPR) initiative and NUREG–1556, Volume 1, issued for public comment October 3, 1996 (61 FR 51729). No amendment fees would be assessed for the amendments issued in accordance with NUREG 1556 to portable gauge licenses because the regulatory program would include commitments from the licensee

concerning RSO qualifications and if those commitments are included in the amendment application then there would be no technical review conducted by the NRC. The NRC expects NUREG 1556 to be finalized before the final fee rule becomes effective. If not, then this proposed change will not be included in the final fee regulation.

Section 170.20 Average Cost per Professional Staff-Hour

This section would be amended to establish two professional staff-hour rates based on FY 1997 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1997 for all activities whose fees are based on full cost under § 170.21 would be \$131 per hour, or \$233,055 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under § 170.31 would be \$125 per hour, or \$222,517 per direct FTE. The rates are based on the FY 1997 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.
2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.
3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for general and administrative support are allocated to each program based on that program's salaries and benefits. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1997 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Salary and Benefits	\$155.3	\$48.4
Allocated Agency Management and Support	42.5	13.2
Subtotal	197.8	61.6
General and Administrative Support (G&A):		
Program Travel and Other Support	9.6	2.5
Allocated Agency Management and Support	72.1	22.4
Subtotal	81.7	24.9
Less offsetting receipts1	
Total Budget Included in Hourly Rate	279.4	86.5
Program Direct FTEs	1,196.9	388.7
Rate per Direct FTE	233,055	222,517
Professional Hourly Rate	131	125

Dividing the \$279.4 million budget for the reactor program by the number of reactor program direct FTEs (1196.9) results in a rate for the reactor program of \$233,055 per FTE for FY 1997.

Dividing the \$86.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (388.7) results in a rate of \$222,517 per FTE for FY 1997. The Direct FTE Hourly Rate for the reactor program would be \$131 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$233,055) by the number of productive hours in one year (1776 hours) as indicated in the revised OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program would be \$125 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$222,517) by the number of productive hours in one year (1776 hours). The FY 1997 rate is slightly higher than the FY 1996 rate due in part to the Federal pay raise given to all Federal employees in January 1996.

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 NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1997 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, for the reactor program and any direct program support

(contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1997 hourly rate for the reactor program, as shown in § 170.20. The fees in § 170.21 for the review of import and export licensing, facility Category K, would be adjusted for FY 1997 to reflect both the increase in the hourly rate and the revised average professional staff hours needed to process certain types of licensing actions.

For those applications currently on file and pending completion, footnote 2 of § 170.21 would be revised to provide that professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file that 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, which are based on full-cost recovery, would be modified to recover the FY 1997 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services

provided under the schedule would be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application ("flat" fees) would be adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license and amendment) and the increase in the professional hourly rate from \$120 per hour in FY 1996 to \$125 per hour in FY 1997.

As previously indicated, the CFO Act requires that the NRC conduct a biennial review of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses and amendments). The full cost license and inspection fees (e.g., for fuel cycle facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the proposed materials program professional hourly rate of \$125 per hour for FY 1997. The review indicated that the NRC needed to

modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1995 (60 FR 32218; June 20, 1995). Thus the revised hours used to determine the proposed fees for FY 1997 reflect the changes in the licensing program that have occurred since that time. For new licenses, the proposed fees for FY 1997 are increased in approximately 70 percent of the fee categories, while the proposed fees for amendments have increased in over 60 percent of the fee categories.

The "flat" fees in § 170.31 for the review of import and export licensing applications have increased from FY 1996 as a result of the increase in the hourly rate and the results of the biennial review. The proposed licensing "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, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule would be subject to the fees in this proposed rule.

The amounts of the materials licensing "flat" fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees that are greater than \$1,000 but are less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000. Fees under \$1,000 are rounded to the nearest \$10.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$125, as shown in § 170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§ 50.54, 50.59 and 70.32. The NRC is announcing here that licensees would be billed for post-implementation reviews of these changes under §§ 170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions including any review prior to licensee submissions, between the NRC and licensees. As in the past, any pre-implementation interaction will not be

fee-bearing. It is noted that the NRC plans to inform reactor licensees in the near future that their submittals under § 50.54(a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of § 50.54. The NRC will then verify that the changes are in compliance with § 50.54.

Part 171

Section 171.13 Notice

The language in this section would be revised to indicate that in the unlikely event the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC would continue to assess fees at the same rates as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991 when 100 percent fee recovery was initiated. However, the possibility exists that the NRC might be unable to establish fees for a current fiscal year through the notice and comment process. Therefore, as a contingency plan for meeting the requirement of OBRA-90, the NRC is proposing to amend § 171.13 to indicate that if the NRC is unable to promulgate a final fee rule within a current fiscal year, then fees would continue to be assessed at the same rates as the previous fiscal year. The NRC will continue to work diligently to publish the fee rules at the earliest possible time during the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised as described below. Paragraphs (a), (b), (c) (1), (c)(2), (e), and (f) would be revised to comply with the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget for FY 1997.

Paragraph (b) would be revised in its entirety to establish the FY 1997 annual fee for operating power reactors and to change fiscal year references from FY 1996 to FY 1997. The fees would be established by increasing FY 1996 annual fees (prior to rounding) by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as in the number of licensees paying the fees. The first

adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

With respect to Big Rock Point, a smaller, older reactor, the NRC proposes to grant a partial exemption from the FY 1997 annual fees similar to FY 1996 based on a request filed with the NRC in accordance with § 171.11.

Each operating power reactor, except Big Rock Point, would pay an annual fee of \$2,972,000 in FY 1997.

Paragraph (e) would be revised to show the amount of the FY 1997 annual fee for nonpower (test and research) reactors. In FY 1997, the proposed fee of \$57,200 is 8.2 percent above the FY 1996 level. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

Paragraph (f) would be revised to change fiscal year date references.

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

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$350,000 to \$5 million pay a maximum fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on the budget but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience. 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.

Section 171.16(d) would be revised to establish the FY 1997 annual fees for materials licensees, including

Government agencies, licensed by the NRC. These fees were determined by increasing the FY 1996 annual fees (prior to rounding) by 8.2 percent.

In addition, an annual fee is proposed in § 171.16(d), fee Category 1.E., for each Certificate of Compliance issued to the USEC on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. The NRC announced its intent to issue the compliance certificates to USEC on September 19, 1996 (61 FR 49360). The NRC intends to assume regulatory jurisdiction over the two plants from DOE on March 3, 1997. Because the two plants have been certified in FY 1997, the NRC is proposing to establish an annual fee of \$2,600,000 for each of these two facilities. The NRC methodology for determining annual fees for major fuel facilities was explained in the FY 1995 final fee rule published in the Federal Register on June 20, 1995 (60 FR 32234). As indicated in the Federal Register, the methodology can be applied to determine annual fees for new licenses or certificates. The NRC has applied the methodology to the USEC facilities and has concluded that the relative weighted safety and safeguards factors for these facilities is similar to a high enriched uranium facility. Therefore, the NRC is proposing to establish the annual fee for each USEC uranium enrichment facility at \$2,600,000, the same as that for a high enrichment facility (fee category 1.A.(1)(a)). Because the certifications would be in effect for the last six months of FY 1997, the NRC would assess one-half of the annual fee or \$1,300,000 to USEC for each certificate for the last half of FY 1997.

The amount or range of the FY 1997 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	\$2,600,000.
Part 70—Low enriched fuel facility.	1,276,000.
Part 40—UF ₆ conversion facility.	647,000.
Part 40—Uranium recovery facilities.	22,300 to 61,600.
Part 30—Byproduct Material Licenses.	490 to 23,500 ¹ .
Part 71—Transportation of Radioactive Material.	1,000 to 78,700.

MATERIALS LICENSES ANNUAL FEE RANGES—Continued

Category of license	Annual fees
Part 72—Independent Storage of Spent Nuclear Fuel.	282,000.

¹ Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$420,000.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to the FY 1997 annual fees.

Section 171.17 Proration

The NRC is proposing to amend the proration provisions in § 171.17 for reactor and materials licenses. Paragraph (a) would be amended to reflect the changes in 10 CFR part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). Reactor annual fees would be prorated based on the requirements of § 50.82(a)(2) that upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. Previously the proration of reactor annual fees was based on the date of issuance of the possession only license (POL).

Paragraph (b) would be amended to recognize that materials licenses transferred to a new Agreement State are considered terminated by the NRC for annual fee purposes, on the date that the Agreement with the State becomes effective. The State of Massachusetts is expected to become an Agreement State in FY 1997 and approximately 425 licenses will be transferred to the State on the effective date of the Agreement. The NRC would assess the annual fees for those licenses being transferred to the State of Massachusetts using the current proration provisions of § 171.17(b) whereby the licenses would be considered terminated on the

effective date of the Agreement with Massachusetts.

New licenses issued during FY 1997 would receive a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1997, will not be assessed an annual fee for FY 1997. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees will be subject to the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

Section 171.19 Payment

Paragraph (b) would be revised to give credit for partial payments made by certain licensees in FY 1997 toward their FY 1997 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1997 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) would be revised to update fiscal year references. Paragraph (d) would be revised to modify the billing schedule for terminated materials licenses and new materials licenses. Licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

As in FY 1996, the NRC would continue to bill annual fees for most

materials licenses on the anniversary date of the license (licensees whose annual fees are \$100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This proposed rule applies to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1997 before the effective date of the FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1997 final rule would be billed, at the FY 1997 revised rates, during their anniversary month of their license and payment would be due on the date of the invoice.

During the past six 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 either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently 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).

IV. Electronic Access

Comments on the proposed rule may be submitted through the Internet by addressing electronic mail to

INTERNET:SECY@NRC.GOV.

Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. This proposed rulemaking is available for review and comment on the BBS. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via the Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, and dialing the toll free number 1-800-303-9672.

Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703-321-3339, or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has the option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the "Rules Menu." Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files and does not display the NRC "Rules Menu."

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-415-5780; e-mail AXD3@nrc.gov.

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for

special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

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

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

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

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

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

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

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1997 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 1997 budget of \$476.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program and the general fund related to commercial vitrification of waste at the Department of Energy Hanford, Washington site.

(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.

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

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

VIII. Regulatory Flexibility Analysis

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

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1997. The proposed rule results in an increase in the annual fees charged to all licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this

document) is the small entity compliance guide for FY 1997.

IX. Backfit Analysis

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

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. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

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

1. The authority citation for part 170 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 § 170.11, paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(11) Materials portable gauge licenses issued in accordance with NUREG-1556 that are amended to change only the name of the Radiation Safety Officer. This exemption does not apply to those materials portable gauge licenses that

also authorize possession and use of nuclear materials for other activities.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review

or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	\$131 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	125 per hour.

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

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

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

SCHEDULE OF FACILITY FEES

[see footnotes at end of table]

Facility categories and type of fees	Fees ^{1 2}
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—new license	\$8,100
Amendment	\$8,100
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a) (1)–(8):	
Application—new license	\$5,000
Amendment	\$5,000
3. Application for export of components requiring foreign government assurances only:	
Application—new license	\$2,900
Amendment	\$2,900
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:	
Application—new license	\$1,300
Amendment	\$1,300
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:	
Amendment	\$190

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

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

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

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export

licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: ⁴	
Application—New license	\$580.
Amendment	\$390.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: ⁴	
Application—New license	\$780.
Amendment	\$300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility	
Application	\$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1)	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1)	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	\$130.
Amendment	\$290.
C. All other source material licenses:	
Application—New license	\$3,700.
Amendment	\$580.
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	\$3,900.
Amendment	\$550.
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	\$1,600.
Amendment	\$580.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D	
Application—New license	\$7,100.
Amendment	\$650.
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 includes licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4)	
Application—New license	\$2,000.
Amendment	\$440.
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	\$1,100.
Amendment	\$390.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application—New license	\$2,000.
Amendment	\$450.
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	\$4,700.
Amendment	\$760.
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	\$2,800.
Amendment	\$1,000.
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	\$4,500.
Amendment	\$1,100.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	\$1,800.
Amendment	\$310.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	\$1,000.
Amendment	\$350.
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	\$5,600.
Amendment	\$780.
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	\$1,900.
Amendment	\$640.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	\$2,100.
Amendment	\$510.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	\$4,400.
Amendment	\$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	\$750.
Amendment	\$350.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment.	
Full Cost Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	\$2,600.
Amendment	\$540.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2 3}
C. Licenses 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	\$2,300.
Amendment	\$230.
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	\$3,600.
Amendment	\$850.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	\$6,600.
Amendment	\$1,000.
7. Medical licenses:	
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	\$3,600.
Amendment	\$400.
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	\$3,900.
Amendment	\$740.
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	\$1,800.
Amendment	\$460.
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	\$590.
Amendment	\$410.
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	\$610.
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	\$2,200.
Amendment—each device	\$1,100.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	\$940.
Amendment—each source	\$630.
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	\$480.
Amendment—each source	\$160.
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	\$350.
Amendment	\$640.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: ⁵	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2 3}
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, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	\$8,100.
Amendment	\$8,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	\$5,000.
Amendment	\$5,000.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	\$2,900.
Amendment	\$2,900.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	\$1,300.
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 in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	\$190.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20	
Application (initial filing of Form 241)	\$1,100.
Revisions	\$200.

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

(a) *Application fees.* Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, 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 the prescribed 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 subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 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.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. 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. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

² Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of 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.

³ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. 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.

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

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

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

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

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

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

6. The authority citation for part 171 continues to read as follows:

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

7. Section 171.13 is revised to read as follows.

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the Federal Register as soon as is practicable but no later than the third quarter of FY 1997 and 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and

171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees would be assessed based on the rates in effect for the previous fiscal year.

8. In § 171.15, paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) 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) The FY 1997 uniform annual fee for each operating power reactor which must be collected by September 30, 1997, is \$2,972,000. This fee has been determined by adjusting the FY 1996 annual fee upward by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge

(surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under 10 CFR part 170 of this chapter.

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

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center.

(c) The activities comprising the FY 1995 surcharge are as follows:

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

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 1997 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.....\$57,200
 Test reactor.....\$57,200

(f) For FY 1997 and FY 1998, annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (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 1997 as follows:

Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts)	Maximum annual fee per licensed category
\$350,000 to \$5 million	\$1,800
Less than \$350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees ...	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees ...	400

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

* * * * *

(4) For FY 1997, the maximum annual fee a small entity is required to pay is

\$1,800 for each category applicable to the license(s).

(d) The FY 1997 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1997 annual fees, which must be collected by September 30, 1997, have been determined by adjusting upward the FY 1996 annual fees by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown for convenience in paragraph (e) of this section.

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

Category of materials licenses	Annual fees ^{1 2 3}
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM-42	\$2,600,000
Nuclear Fuel Services SNM-124	2,600,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM-33	1,276,000
General Electric Company SNM-1097	1,276,000
Siemens Nuclear Power SNM-1227	1,276,000
Westinghouse Electric Company SNM-1107	1,276,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities	
(a) Facilities with limited operations:	
B&W Fuel Company SNM-1168	508,000
(b) All Others:	
General Electric SNM-960	345,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	282,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,000
E. Licenses or certificates for the operation of a uranium enrichment facility	2,600,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	647,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities ⁴	61,600
Class II facilities ⁴	34,800
Other facilities ⁴	22,300
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	45,200

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

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	8,000
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700
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	16,600
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,600
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license. This category does not apply to licenses issued to non-profit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	11,200
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 includes licenses issued pursuant to §§ 32.72, 32.73 and 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
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 in which the source is not exposed for irradiation purposes	3,800
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	19,600
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	5,000
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	8,900
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	3,800
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	3,200
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	12,300
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	5,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,100
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	14,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700
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	⁵ 102,000
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,400

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

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
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	7,700
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	8,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,200
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,700
7. Medical licenses:	
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	10,300
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. This category also includes the possession and use of source material for shielding when authorized on the same license ⁹	23,500
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license ⁹	4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
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	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,600
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	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	⁶ N/A
Other Casks	⁶ N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs	
Users and Fabricators	78,700
Users	1,000
11. Standardized spent fuel facilities	⁶ N/A
12. Special Projects	⁶ N/A
13. A. Spent fuel storage cask Certificate of Compliance	⁶ N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	282,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	⁷ N/A
15. Import and Export licenses	⁸ N/A
16. Reciprocity	⁸ N/A
17. Master materials licenses of broad scope issued to Government agencies	420,000
18. Department of Energy:	
A. Certificates of Compliance	¹⁰ 1,166,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,961,000

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. Annual fees for licensees who filed for termination of a license, downgrade 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.

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

³ For FY 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.

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

⁵Two 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.

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

⁷Licenses 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.

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

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

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

(e) The activities comprising the FY 1995 surcharge are as follows:

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

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

* * * * *

10. In § 171.17, introductory text, paragraphs (a), (b) introductory text, and (b)(1) are 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 and nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full fee is due and payable each subsequent fiscal year. Licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect.

(b) *Materials licenses (including fuel cycle licenses)*. (1) *New licenses and terminations*. The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new

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

* * * * *

11. In § 171.19, paragraphs (b), (c), and (d) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FYs 1997 and 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 on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

(c) For FYs 1997 and 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.

(d) For FYs 1997 and 1998, annual fees of less than \$100,000 must be paid as billed by the NRC. As established in FY 1996, materials license annual fees that are less than \$100,000 are billed on the anniversary of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Beginning June 11, 1996, the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

Dated at Rockville, Maryland, this 19th day of February, 1997.

For the Nuclear Regulatory Commission.
Ronald M. Scroggins,
Acting Chief Financial Officer.

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

I. Background

The Regulatory Flexibility Act of 1980, as amended, (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 (RFA), first 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). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate \$1 million size standard for private practice physicians and applied a receipts-based size standard of \$5 million to this class of licensees. This mirrored the revised SBA standard of \$5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995 and FY 1996 fee rules and proposes to continue their use in this FY 1997 proposed rule. The small entity fee categories in § 171.16(c) of this proposed rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at \$1,800 and a lower-tier small entity fee of \$400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of \$250,000 was raised to \$350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from \$3.5 million to \$5 million. The NRC believes that continuing these actions for FY 1997 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

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 for collection was approximately \$445.3 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million; for FY 1994 about \$513 million; for FY 1995 about \$503.6 million; for FY 1996 about \$462.3 million and the amount to be collected in FY 1997 is approximately \$462.3 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) in FY 1993 (58 FR 38666; July 20, 1993) in FY 1994 (59 FR 36895; July 20, 1994) in FY 1995 (60 FR 32218; June 20, 1995) and in FY 1996 (61 FR 16203) 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 FYs 1991-1996.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR part 170 fees and other adjustments as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is proposing to establish the FY 1997 annual fees for all licensees at 8.2 percent above the FY 1996 annual fees. Because the total amount to be recovered through fees in FY 1997 is identical to the amount estimated for recovery in FY 1996, the NRC believes that establishing new baseline fees for FY 1997 is not warranted.

Public Law 104-121, the Contract with America Advancement Act of 1996 was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a "major" rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR part 170 and

171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1997.

II. Impact on Small Entities

The comments received on the proposed FY 1991-1996 fee rule revisions and the small entity certifications received in response to the final FY 1991-1996 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, about 20 percent (approximately 1,400 licensees) have requested small entity certification in the past. 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 1991-1994 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 five years, approximately 2,900 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 commenters previously indicated that the \$3.5 million threshold for small entities was 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), in the FY 1993 rule (58 FR 38666; July 20, 1993); in the FY 1994 rule (59 FR 36895; July 20, 1994); in the FY 1995 rule (60 FR 32218; June 20, 1995) and in the FY 1996 rule (61 FR 16203; April 12, 1996). 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 1991–1996 evaluations of these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is proposing to continue for FY 1997, 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 1997, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1997, the NRC concludes that the 10 CFR part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR part 171 maximum annual small entity fee of \$1,800 be continued.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1997 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing, for FY 1997, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of \$1,800 for small entities, when added to the part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992–1996, the NRC is proposing to continue the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of \$400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the Federal Register on April 17, 1992 (57 FR 13625) and now includes manufacturing companies with a relatively small number of employees.

III. Summary

The NRC has determined the 10 CFR part 171 annual fees 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 fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the proposed fees for small entities maintain a balance

between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991–1996 rules remain valid for this proposed rule for FY 1997. In compliance with Public Law 104–121, a small entity compliance guide has been prepared by NRC and is shown as Attachment 1 to this Regulatory Flexibility Analysis.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1997

Contents

Introduction

NRC Definition of Small Entity

NRC Small Entity Fees

Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final action as defined by the Act. The NRC's fee rule published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees meets the thresholds for being considered "major" under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1997. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1997 annual fees assessed under 10 CFR part 171. Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, PO Box 954514, St. Louis, MO 63195–4514.

The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC effective May 11, 1995. The small entity size standards are found in 10 CFR 2.810 of the NRC's regulations. To comply with the RFA, the NRC has established two tiers of small entity fees. These fees are found in 10 CFR 171.16(c) of the fee regulations.

NRC Definition of Small Entity

The NRC has defined small entity in consultation with the Small Business Administration. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, small entities are:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.¹

NRC Small Entity Fees

The NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
\$350,000 to \$5 million	\$1,800
Less than \$350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee bill, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee.

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

Approximately 900 licensees pay the small entity fee of \$1,800 while 500 licensees pay the lower-tier small entity fee of \$400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license are to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

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

4. A new small entity form is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new form must be completed and returned for the fee to be reduced to the small entity fee.

LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed form, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195-4514.

5. Questions regarding fee bills may be posed orally or in writing. Please call the licensing fee staff at 301-415-7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

[FR Doc. 97-4704 Filed 2-26-97; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94-97; Notice 2]

RIN 2127-AF40

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the test procedures in Standard No. 216, *Roof Crush Resistance*, to make them more suitable to testing vehicles with highly sloped roofs or raised roofs. The current test procedure is intended to test the strength of the roof over the driver. It involves lowering a large test plate, inclined forward at a five degree angle, to an initial contact point near the leading edge of the roof. However, when the procedure is performed on certain rounded, aerodynamically-shaped roofs that may themselves slope at more than five degrees, small differences in test plate angle result in considerable variability in the location of the initial contact point, thus reducing the repeatability of the test results. Similarly, for vehicles with raised, irregularly shaped roofs (such as some converted vans), the initial contact point may not be above the driver, but on the raised rear portion of the roof, behind the driver.

This proposal addresses these problems by specifying the use of a smaller test plate for use on vehicles on which the use of the current larger test plate would result in an initial contact point behind the driver. The rearward edge of the smaller test plate will be