NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 140, 170, and 171

RIN 3150–AF 83

Revision of Fee Schedules; 100 Percent Fee Recovery, FY 1998

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1998, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1998 is approximately $454.8 million. The NRC is also providing additional payment methods for civil penalties and indemnity fees, as well as annual and licensing fees.

EFFECTIVE DATE: August 10, 1998.

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

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

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I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, required 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 at 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 1, 1998 (63 FR 16046), the NRC published a proposed rule to establish the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1998, less the appropriation received from the Nuclear Waste Fund and the General Fund, and to provide additional payment methods for civil penalties and indemnity fees. These changes were highlighted in the proposed rule (63 FR 16046; April 1, 1998) and have been adopted in this final rule for FY 1998. The major changes are summarized as follows:

1. Adjust all 10 CFR 171 annual fees by the percent change in the NRC budget authority since its FY 1997 appropriation. In this final rule, FY 1998 annual fees have been adjusted downward by about 0.1 percent. This change is consistent with the NRC's intention stated in the FY 1995 final rule. The NRC indicated that, beginning in FY 1996, annual fees would be stabilized by adjusting the prior year annual fees by the percent change (plus or minus) in the NRC budget authority taking into consideration the estimated collections from 10 CFR Part 170 fees and the number of licensees paying fees;

2. Revise, by lowering, the two professional hourly rates in § 170.20 that are used to determine the 10 CFR Part 170 fees assessed by the NRC. The rate for FY 1998 for the reactor program is $124 per hour and the rate for the materials program is $121 per hour.

3. Adjust downward the current licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees to reflect the changes in the revised hourly rates.

4. Revise § 170.12(g) to include full cost recovery for resident inspectors and to recover costs incurred up to approximately 30 days after issuance of an inspection report.

5. Implement a procedural change to assess fees under §§ 170.21 and 170.31 for activities, such as application reviews and inspections, performed during compensated overtime. The compensated overtime hours will be billed at the normal hourly rate.

II. Responses to Comments

The NRC received and evaluated four comments on its proposed rule.

For evaluation purposes, comments similar in nature have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows.

A. Relationship Between Costs and Annual Fees

1. *Comment.* Two commenters, the Nuclear Energy Institute (NEI) and Florida Power and Light Company (FPL), indicated that the basis for the increase in the annual fees was not explained in the proposed rule. These commenters indicated that NRC has not followed the Congressional directive in the Conference Report on the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) that the annual charges, ''to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees.'' NEI stated that the general descriptions of the activities comprising the basis for the annual fee do not provide sufficient information to enable the public to comment meaningfully on this aspect of the proposed rule, and went on to argue that the NRC's obligation to examine its activities and their associated costs annually pursuant to OBRA–90 cannot be satisfied by merely adjusting the FY 1995 baseline determinations. Both of these commenters indicated that the NRC should not proceed with the rule as proposed and should provide a clear explanation of the relationship between services provided and the proposed annual fee. FPL stated that the description and level of justification should be no less than that employed prior to 1995. NEI also stated that the NRC did not provide any information to enable an evaluation of the basis for the judgment that neither of the two tests for reexamining the basis for the annual fees (e.g., a substantial change in the NRC's budget or in the magnitude of a specific budget allocation to a class of licensees) had been met.

Response. The NRC believes that it has provided sufficient information to allow public evaluation and comment on the proposed fees. The proposed fee rule contained specific explanations for

the changes to the annual fees, including tables showing the calculation of the percentage change to the annual fees. In addition, as stated in the proposed rule, the workpapers supporting the proposed fee rule changes are available for public examination in the NRC Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555. Moreover, a detailed explanation of NRC's budget is set forth in NUREG–1100, Volume 13, Budget Estimates Fiscal Year 1998 published in February 1997 and is available to commenters. Finally, NRC staff during the comment period responded to telephone requests for additional explanation of the proposed rule.

Contrary to the commenters' inference, OBRA–90 does not require NRC to rebaseline annual fees every year. The statute states that ''[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.'' The Conference Report on the statute makes clear that the Congress recognized that the allocation of fees would diverge from the allocation of resources in the budget. The conferees further ''recognize[d] that there are expenses that cannot be attributed either to an individual licensee or a class of licensees.'' (House Conference Report 101–954, p. 962.) This language affords the Commission some flexibility in shaping its annual fee schedules.

In promulgating the FY 1995 fee rule, the NRC solicited comments on a proposal to establish the annual fees for FY 1996 through FY 1998, and FY 1999 if OBRA–90 is extended, based on the percentage decrease or increase in the NRC's total budget, unless there was a substantial change in that total budget or in the magnitude of a specific budget allocation to a class of licensees. The NRC indicated that the annual fees would also be adjusted to compensate for changes in Part 170 fee collections and the number of licensees paying annual fees. The NRC concluded that this approach is ''practicable'' and fully consistent with its statutory mandate. Most commenters in FY 1995 agreed that this method represented a simplification and streamlining of the fee-setting procedures and was necessary to eliminate the large fluctuations in annual fees that had occurred in the past and to provide for greater predictability of fees. At that time, neither NEI nor any reactor licensee objected to the proposed method. Based on the comments received supporting the methodology, the NRC adopted the change, and the revised method was used to determine the FY 1996 and FY 1997 annual fees. The revised method was not challenged by commenters when it produced a reduction of about 6 percent in FY 1996, and at the time NEI stated that it was ''pleased that the annual fees for licensees are being lowered by slightly over 6%'' (letter to John C. Hoyle, Secretary of the Commission, from William H. Rasin, NEI, dated February 28, 1996). The Commission reaffirmed the legality of its approach in its denial of an NEI petition seeking reconsideration of the final fee rule for fiscal year 1997. *See*, October 1, 1997, letter from John C. Hoyle, Secretary of the Commission, to Robert W. Bishop, Vice President and General Counsel, Nuclear Energy Institute.

With regard to the question of whether the criteria established by NRC for rebaselining have been met, the NRC specifically stated in the proposed rule that there has not been a substantial change in the NRC budget or the magnitude of a specific budget allocation to a class of licensees. The FY 1998 budgeted amount to be recovered through NRC's fees is $7.5 million less than in FY 1997. This is clearly not a substantial change. Similarly, as reflected in the NRC's annual budgets, there have not been major changes in the allocation of budgeted resources to specific classes of licensees.

This final rule adopts the methodology to streamline and stabilize FY 1998 annual fees by adjusting these fees by the percentage change in NRC's total budget authority. The FY 1997 fees have been used as base annual fees, and these fees have been adjusted for FY 1998 based on the percentage change in NRC's budget authority, taking into consideration the total number of licensees paying fees and estimated collections from 10 CFR Part 170 fees. The amounts of the annual fees for some of the classes of licensees have decreased since the publication of the proposed rule. The proposed FY 1998 annual fees were developed using an estimated number of days for proration of the FY 1998 annual fees for Zion Stations Units 1 and 2. As a result of this estimation, the FY 1998 proposed annual fees were based on the equivalent of 2.5 fewer power reactors paying annual fees in FY 1998 than in FY 1997, and the proposed FY 1998 annual fees increased by 0.1 percent compared to the actual (prior to rounding) FY 1997 annual fees. The final FY 1998 annual fees have been developed based on the certification dates for permanent cessation of operations and permanent removal of fuel from the Zion 1 and 2 reactor vessels. The certifications were filed later in the fiscal year than anticipated when the proposed rule was developed, resulting in the equivalent of 2.3 fewer power reactors paying annual fees in FY 1998 than in FY 1997. The result is that the final FY 1998 annual fees have decreased by about 0.1 percent compared to the FY 1997 actual (prior to rounding) annual fees.

2. *Comment.* FPL stated that the proposed rule does not reflect any Commission consideration of the specific services driving the cost increase. FPL also questioned why the reactor annual fee was not reduced in light of the premature shutdown of four nuclear units in FY 1997. Another commenter, Tennessee Valley Authority (TVA), stated that, with the shift from operating reactor oversight to decommissioning activities, strong action to reduce overhead and central staff appears appropriate. TVA also stated that the 10 percent fewer power licensees with much better average performance than in the past should yield reductions in total NRC fees.

Response. Although the proposed reactor annual fee increased slightly, by 0.1 percent, from FY 1997, the total budget to be recovered through fees decreased by $7.5 million from FY 1997. In fact, the proposed rule reflected a decrease in the total annual fees for the power reactor class of licensees of approximately $7.4 million compared to FY 1997. The slight increase in the proposed annual fee to be assessed to each reactor licensee was not the result of increased costs or a lack of consideration of the specific services. Rather, the proposed change was primarily the result of the equivalent of 2.5 fewer reactors paying the annual fee compared to FY 1997. As explained in response to the above comment, this final rule reflects the equivalent of 2.3 fewer reactors paying the FY 1998 fees, and as a result the final FY 1998 annual fees decreased by 0.1 percent compared to the FY 1997 exact (prior to rounding) annual fees.

B. Fees for Services That do not Benefit Licensees

1. Comment. NEI, FPL, and TVA continued to urge NRC to take action to eliminate fees for services that do not benefit the licensees paying the annual fees. FPL and NEI concluded that recovering the costs of these activities from reactor licensees violates the provision of OBRA–90 that the charges shall have a reasonable relationship to the cost of providing regulatory services. FPL argued that assessing these non-

reactor costs to reactor licensees exceeds the Congressional delegation of authority and is arbitrary and capricious, and therefore violates the Equal Protection requirements of the Due Process Clause of the Fifth Amendment to the United States Constitution. NEI suggested that the NRC could conclude that recovering 88 percent of its budget authority by eliminating these costs from fee recovery is consistent with the requirement of OBRA–90 to recover ''approximately'' 100 percent of its budget authority from fees, or NRC could seek legislation to resolve the issue, as it has committed to do in the past.

Response. As NRC has stated on many occasions, it shares commenters' concerns that licensees are paying for activities that do not directly benefit them. However, the NRC disagrees with the assertion that recovering these costs from licensees violates statutory requirements. In fact, the Congressional guidelines provided in the Conference Report to the 100 percent fee recovery legislation specifically provide for the assessment of fees to licensees to recover agency costs that may not provide direct benefits to them. The conferees recognized that ''Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties'' and that Congress must provide guidelines for making these assessments. The conferees recognized that certain expenses cannot be attributed either to an individual or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from the licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. (136 Cong. Rec. at H12692–3.) Based on these explicit guidelines, the NRC concludes that the assessment of fees to recover these costs from licensees is neither arbitrary nor capricious, and does not violate any statute.

Nevertheless, the NRC continues to take action to minimize the impacts of recovering the costs of these activities from licensees. Although legislation recommended in NRC's February 23, 1994, Report to Congress to address these concerns has not been enacted, the NRC has taken several steps to mitigate the perceived inequities within the constraints of existing law. For example, the Commission successfully obtained appropriation legislation that removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies. In addition, when authorized by law, the NRC has made a concerted effort to obtain reimbursements for services provided to other Federal agencies. The NRC has not submitted proposed legislation that would take out of the fee base the costs of services that do not provide direct benefits to licensees because the Office of Management and Budget has advised that such legislation would be inconsistent with the President's budget. The NRC notes that the Senate Committee on Environment and Public Works recently ordered to be reported legislation which would exclude up to $30 million each year from the NRC's fee base.

The NRC disagrees that eliminating these costs from fee recovery, thereby recovering 88 percent of the budget, would meet the OBRA–90 requirement that NRC recover approximately 100 percent of its budget authority through fees. As the NRC stated in the statement of considerations accompanying the FY 1991 final rule (56 FR 31474), it interprets the words ''approximately 100 percent'' as meaning that the Commission should promulgate a rule that identifies and allocates as close to 100 percent of its budget authority to the various classes of NRC licensees as is practical. The Commission concluded that, based on the Conference Report guidelines, it was Congress' intent that the Commission allocate 100 percent of its budget authority for fee assessment, and that the term ''approximately 100%'' refers only to the inherent uncertainties in estimating and collecting the fees. Furthermore, in NRC's annual appropriations acts, the Congress presumes that the NRC fee collections will approximate 100 percent, not 88 percent, of its budget authority. *See, e.g.*, Title IV of the Energy and Water Development Appropriations Act, 1998, P.L. 105–62.

The Conference Report guidance also provides that the costs be ''recovered from such licensees as the Commission in its discretion determines can fairly, equitably and practicably contribute to their payment.'' The FY 1995 fee rule, which established the baselines used in subsequent annual fee rules, including the current one, allocated the cost of the activities that raised fairness and equity concerns to all licensees based on the budgeted dollars for each class of licensee. This allocation results in the entire population of NRC licensees paying for these costs (see 60 FR 14670, 14674). This continues to be a sensible approach.

C. Part 170 Fees

1. Comment. NEI and FPL indicated that NRC should increase the percentage of costs recovered through Part 170 fees. FPL claimed that there is no exemption authority from the provision that ''any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.'' NEI stated that ''.....79 percent of the fees proposed to be collected from NRC licensees are for non-discrete services. This approach makes it too easy to shift personnel from providing discrete services to working on generic issues, thereby increasing overhead costs as actual services provided to individual licensees decline, rather than make the hard decisions of what activities are really necessary.'' FPL concluded that NRC has not adequately allocated costs to the beneficiaries of the services. NEI and TVA supported NRC's proposed full-cost provision for resident inspectors; however, TVA indicated that time for resident inspectors assigned to special inspections at other plants should be charged to those specific inspections. TVA supported the reduced hourly rate and NRC's proposed long-term policy to progress bill for all inspections.

Response. The NRC previously responded to commenters' claim that there is no exemption authority from the provision that those receiving a service shall pay fees to cover the Commission's costs of providing the service (62 FR 29195). As the NRC pointed out in that response, the NRC is barred by law from charging most Federal agencies 10 CFR Part 170 fees, and exemptions from fees granted by the NRC are well founded in law and are granted only after full and public consideration of the relevant policy questions.

The proposed rule included several actions that would lead to increased cost recovery under Part 170 for services provided to identifiable beneficiaries. The NRC is adopting the proposed change to recover full cost for resident inspectors under 10 CFR Part 170; however, as a result of the comments received the NRC has clarified in 10 CFR 170.12(g) that time spent by a resident inspector in support of activities at other sites will not be billed to the site to which the resident inspector is assigned. The NRC is also adopting the proposed change to recover costs incurred within 30 days after the inspection report is issued, and the

procedural change to assess Part 170 fees for licensing and inspection activities performed during compensated overtime. Because this final rule will not be effective before the fourth quarter of FY 1998, the increased Part 170 collections for these activities do not affect the FY 1998 fee calculations, but will be reflected in the FY 1999 fee rule. As indicated in the proposed rule, the NRC will progress bill for inspections under certain circumstances. Based on the comments received, the necessary changes to 10 CFR 170 will be made in future rulemaking once the system is available to accommodate progress billing for all inspections.

The NRC has established in this FY 1998 final rule a professional hourly rate of $124 for the reactor program and $121 per hour for the materials program. These revised rates, which are a reduction from the FY 1997 rates, will be used to determine the 10 CFR Part 170 fees.

The NRC has already taken steps to evaluate other areas for potential cost recovery under Part 170, with the intention of including the recommended activities in the FY 1999 proposed fee rule for public comment.

D. Annual Fees for Certificates of Compliance Issued to the United States Enrichment Corporation

1. *Comment.* The United States Enrichment Corporation (USEC) requested that a single annual fee be assessed for the two Gaseous Diffusion Plants (GPDs) operated by USEC and that the fee be reduced to a value commensurate with the proposed fee for the low-enriched uranium fuel fabrication facilities. USEC submitted detailed information to support its request. USEC stated that its comments not only address its belief that the proposed rule is not fair and equitable, but also serve as a request for reconsideration of the NRC's March 23, 1998, denial of USEC's request for an exemption from the annual fees.

Response. NRC rejected similar arguments from USEC in the FY 1997 final rule (62 FR 29197), and in its March 23, 1998, denial of USEC's annual fee exemption request. The NRC continues to believe for the reasons stated in these documents that the USEC must pay a full annual fee for each of its enrichment facilities and that its facilities have been placed in the appropriate fee category. Insofar as USEC's comment letter requested a reconsideration of NRC's March 23, 1998, denial of its annual fee exemption request, the NRC will respond to that request separately.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1998 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 1998, the NRC's budget authority is $472.8 million, of which $15.0 million has been appropriated from the NWF. In addition, $3.0 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 and for the pilot program for the external regulation of the Department of Energy. The FY 1998 appropriation language states that the $3.0 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site and activities associated with the pilot program for external regulation of the Department of Energy shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately $454.8 million in FY 1998 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees.

The total amount to be recovered in fees for FY 1998 is $7.5 million less than the amount estimated for recovery for FY 1997. The NRC estimates that approximately $94.6 million will be recovered in FY 1998 from fees assessed under 10 CFR Part 170 and other receipts, compared to $95.2 million in FY 1997. The remaining $360.2 million will be recovered in FY 1998 through the 10 CFR Part 171 annual fees, compared to $367.1 for FY 1997.

In addition to the decrease in the amount to be recovered through annual fees and the slight reduction in the estimated amount to be recovered in 10 CFR Part 170 fees, the number of licensees paying annual fees in FY 1998 has decreased compared to FY 1997. For example, Commonwealth Edison notified the NRC that the Zion Station Units 1 and 2 ceased operations on February 13, 1998. On March 11, 1998, the NRC docketed Commonwealth Edison's certification that all fuel has been removed from the Zion Station Units 1 and 2 reactor vessels. In addition, both the Haddam Neck Plant and the Maine Yankee Plant ceased operations during FY 1997 and therefore are not subject to the FY 1998 annual fees. This is equivalent to a reduction of 2.3 power reactors subject to the FY 1998 annual fees compared to FY 1997. The Big Rock Point Plant, a small, older reactor historically granted a partial exemption from the annual fee, also ceased operations in FY 1997 and is no longer subject to annual fees.

The proposed FY 1998 annual fees were developed using an estimated number of days for proration of the FY 1998 annual fees for Zion Station Units 1 and 2. As a result of this estimation, the FY 1998 proposed annual fees were based on the equivalent of 2.5 fewer power reactors paying annual fees in FY 1998 than in FY 1997, and the proposed FY 1998 annual fees increased by 0.1 percent compared to the actual (prior to rounding) FY 1997 annual fees. The final FY 1998 annual fees have been developed based on the Zion 1 and 2 certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessels, which were filed later in the fiscal year than anticipated when the proposed rule was developed, resulting in the equivalent of 2.3 fewer power reactors paying annual fees in FY 1998 than in FY 1997. As a result, the final FY 1998 annual fees decreased by about 0.1 percent compared to the FY 1997 actual (prior to rounding) annual fees.

Because this is a slight decrease, the final (rounded) FY 1998 annual fees for many fee categories are the same as the final (rounded) FY 1997 annual fees. The change to the annual fees is described in more detail in Section B. The following examples illustrate the changes in annual fees:

	FY 1997 annual fee	FY 1998 annual fee
Class of Licensees:		
Power Reactors	$2,978,000	$2,976,000
Nonpower Reactors	57,300	57,300
High Enriched Uranium Fuel Facility	2,606,000	2,604,000
Low Enriched Uranium Fuel Facility	1,279,000	1,278,000
UF_6 Conversion Facility	648,000	648,000

	FY 1997 annual fee	FY 1998 annual fee
Uranium Mills	61,800	61,700
Typical Materials Licenses:		
Radiographers	14,100	14,000
Well Loggers	8,200	8,200
Gauge Users	1,700	1,700
Broad Scope Medical	23,500	23,500

Because the final FY 1998 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 1998 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1998 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1998 rule. Those materials licensees whose license anniversary date during FY 1998 falls before the effective date of the final FY 1998 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1998 final rule will be billed at the FY 1998 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

As announced in the proposed rule, the NRC will no longer mail the final rule to all licensees. In addition to publication in the **Federal Register**, the final rule is available on the Internet at http://ruleforum.llnl.gov/.

Copies of the final rule will be mailed upon request. To obtain a copy of the final rule, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554. As a matter of courtesy, the NRC plans to continue in future years to send the proposed rule to all licensees.

The NRC also announced in the proposed rule that it plans to reexamine its current policy of exempting from annual fees those licensees whose facilities are being decommissioned, or who have possession only licenses. The proposed rule stated that this review would also reexamine NRC's annual fee policy for reactors' storage of spent fuel. Any changes to the current fee policies resulting from these reexaminations will be included in the FY 1999 fee rulemaking. One purpose of the study is to assure consistent fee treatment for both wet storage (i.e., spent fuel pool) and dry storage (i.e., independent spent fuel storage installations, or ISFSIs) of spent fuel. The Commission has previously determined that both storage options are considered safe and acceptable forms of storage for spent fuel. Under current fee regulations, Part 50 licensees whose facilities are being decommissioned and who store spent fuel in a spent fuel pool are not assessed an annual fee, but licensees who store spent fuel in an ISFSI under Part 72 are assessed an annual fee. The NRC will review this policy as part of the overall study of the issues related to annual fees for licensees of facilities being decommissioned.

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

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

Four amendments have been made to 10 CFR Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The 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 that each applicant or licensee receives.

First, the NRC is amending § 170.12(g) to include the following for cost recovery:

(1) Full-cost recovery for resident inspectors.

Because the assignment of resident inspectors to a site is an identifiable service to a specific licensee, the NRC will bill the specific licensee for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site. This change is applicable to all classes of licensees having resident inspectors.

(2) Costs expended within approximately 30 days after the issuance of an inspection report.

Part 170 fees will be assessed for activities that occur within approximately 30 days after the inspection report is issued, such as follow-up on the inspection findings. These activities are identifiable services for specific licensees. This change will result in recovery through Part 170 fees of approximately 80 percent of the accumulated costs expended after the inspection report is sent, and will continue to provide applicants and licensees with a definitive point at which billing will cease.

Second, the NRC is revising § 170.12(h) to include credit cards as an additional method of payment, and to provide additional information on electronic payments. Credit card payments will be accepted up to the limit established by the credit card bank. Electronic payments may be made by Fedwire (a funds transfer system operated by the Federal Reserve System) or by Automated Clearing House (ACH). ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Electronic payment will not only expedite the payment process, but will also save applicants and licensees considerable time and money over a paper-based payment system.

Third, the two professional hourly rates established in FY 1997 in § 170.20 are revised based on the FY 1998 budget. These rates are based on the FY 1998 direct FTEs and the FY 1998 budget excluding direct program support (contractual services costs) and the appropriation from the NWF or the General Fund. These rates are used to determine the Part 170 fees. The NRC has established a rate of $124 per hour ($219,901 per direct FTE) for the reactor program. This rate is applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. A second rate of $121 per hour ($214,185 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to all materials activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1997 final fee rule, these rates were $131 and $125, respectively. The decrease in the hourly rates is primarily due to a change in application of the

types of costs included in the hourly rates. Previously, the hourly rates were determined based on the premise that surcharge costs should be shared by those paying Part 170 fees for services as well as those paying Part 171 annual fees. The revised hourly rates have been determined based on the principle that the surcharge costs are more appropriately included only in the Part 171 annual fee.

In addition, Section Chiefs are included as overhead in the calculation of the FY 1998 hourly rates, and any specific Section Chief effort expended for reviews and inspections will not be billed to the applicant or licensee. Previously, the Section Chiefs' time for specific licensing and inspection activities were directly billed under Part 170 to the applicant or licensee. This change is consistent with the current budget structure which includes Section Chiefs as overhead.

Fourth, the NRC has adjusted the current Part 170 licensing fees in §§ 170.21 and 170.31 to reflect the revised hourly rates.

In addition, although not a specific change to Part 170, the NRC will assess Part 170 fees for compensated overtime hours expended for activities covered by Part 170, such as reviews of applications, inspections, Part 55 exams, and special projects. The compensated overtime hours will be billed at the normal hourly rate.

The NRC will also bill for accumulated inspection costs prior to issuance of the inspection report under certain circumstances. NRC plans to progress bill for inspections in selected cases where it is determined that such billing would be in the best interest of the agency and the licensee. If it is determined that the accumulated costs warrant an exception to the billing method currently provided in 10 CFR 170.12(g), NRC will coordinate with the licensee to establish a mutually agreeable billing schedule and will issue an invoice for inspection costs that have accumulated.

The NRC is developing a system that will accommodate routine billing for accumulated inspection costs at a specified interval. Once that system is available, the NRC intends to progress bill for all inspections. The staff sought early comment on the long-term policy in the FY 1998 proposed rule, and received one comment supporting the change. The necessary revision to 10 CFR 170 will be made in future rulemaking when the system is available to accomplish this.

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

Four amendments have been made to 10 CFR Part 171.

First, the NRC is amending § 171.13 to delete specific fiscal year references.

Second, the NRC is amending §§ 171.15 and 171.16 to revise the annual fees for FY 1998 to recover approximately 100 percent of the FY 1998 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 as discussed in the FY 1995 final rule (60 FR 32225; June 20, 1995). In the FY 1995 rule, 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. For FY 1997, the NRC followed the same method as used in FY 1996. Because the amount to be recovered through fees for FY 1997 was identical to the amount to be recovered in FY 1996, establishing new baseline fees was not warranted for FY 1997. Based on a change in the distribution between Parts 170 and 171 fees, a reduction in the amount of the budget recovered from 10 CFR Part 170 fees, a reduction in other offsetting adjustments, and a reduction in the number of licensees paying annual fees, the FY 1997 annual fees for all licensees increased 8.4 percent compared to the FY 1996 annual fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

As indicated in the FY 1995 final rule, because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC followed the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

The FY 1998 amount to be recovered through fees is approximately $454.8 million, which is $7.5 million less than in FY 1997. The estimated amount to be recovered in 10 CFR Part 170 fees is $94.6 million, compared to $95.2 million for FY 1997. In addition, there are the equivalent of 2.3 fewer power reactors subject to annual fees in FY 1998. There is also a reduction of approximately 200 transportation quality assurance approvals as a result of the rulemaking in 1997 that combined these approvals with the Part 34 radiography licenses.

The NRC is establishing the FY 1998 annual fees for all licensees at about 0.1 percent below the FY 1997 actual (prior to rounding) annual fees. Based on the small change, the rounded FY 1998 annual fee for many fee categories is the same as the final (rounded) FY 1997 annual fee. Therefore, for many licensees, the annual fee for FY 1998 is the same as the FY 1997 annual fee. Table I shows the total budget and amounts of fees for FY 1997 and FY 1998.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1997 ANNUAL FEES

[Dollars in millions]

	FY 1997	FY 1998
Total Budget	$476.8	$472.8
Less NWF	−11.0	−15.0
Less General Fund (Hanford Tanks, Pilot for Regulation of DOE)	−3.5	−3.0
Total Fee Base	462.3	454.8
Less Part 170 Fees	−95.2	−94.6
Less other receipts	.....	.....

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1997 ANNUAL FEES—Continued

[Dollars in millions]

	FY 1997	FY 1998
Part 171 Fee Collections Required	367.1	360.2
Part 171 Billing Adjustment: [1]		
Small Entity Allowance	5.0	5.8
Unpaid current FY invoices	3.0	3.9
Payments from prior year invoices	−2.0	−3.2
Subtotal	6.0	6.5
Total Part 171 Billing	373.1	366.7

[1] 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 1998.

Third, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of annual fees for FY 1998 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, 1997, and permanently ceased licensed activities entirely by September 30, 1997. All other licensees and approval holders who held a license or approval on October 1, 1997, are subject to FY 1998 annual fees. This change is being made in recognition of the fact that since the final FY 1997 rule was published in May 1997, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either telephoned or written to the NRC since the FY 1997 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 requests before the end of FY 1997 on September 30, 1997. Similar situations existed after the FY 1991–1996 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.

Fourth, § 171.19 is amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1998 either toward their total annual fee to be assessed or to make refunds, if necessary. Section 171.19(a) is also amended to provide credit cards as an additional method of payment, and to provide additional information on electronic payments. Credit card payments will be accepted up to the limit established by the credit card bank. Electronic payments may be made by Fedwire (a funds transfer system operated by the Federal Reserve System) or by Automated Clearing House (ACH). ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Electronic payments will not only expedite the payment process, but will also save applicants and licensees considerable time and money over a paper-based payment system.

The NRC will send an invoice to reactors and major fuel cycle facilities for the amount of the annual fee after publication of the FY 1998 final rule. For these licensees, payment will be due on the effective date of FY 1998 rule. Those materials licensees whose license anniversary date during the FY 1998 falls before the effective date of the final FY 1998 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1998 rule will be billed, at the FY 1998 revised rates, during the anniversary month of the license and payment will be due on the date of the invoice.

The final changes to 10 CFR Part 171 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.

In addition to the amendments to 10 CFR Parts 170 and 171, the NRC is amending 10 CFR Parts 2 and 140 to include the additional methods of payments provided in 10 CFR Parts 170 and 171.

IV. Section-by-Section Analysis

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

Part 2

Section 2.205 Civil Penalties

Paragraph 2.205(I) is amended to provide additional methods of payment, such as Automated Clearing House and credit cards, and to clarify that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission.

Part 140

Section 140.7 Fees

Paragraphs (a)(5) and (c) are amended to delete references to payment instructions. A new paragraph (d) is added to provide payment instructions, including clarification that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission and to provide additional methods of payments, such as Automated Clearing House and credit cards.

Part 170

Section 170.12 Payment of Fees

Paragraph (g) is amended to indicate that costs incurred within approximately 30 days after an inspection report is issued will be billed to the specific licensee, and that for each site having a resident inspector(s), the licensee will be billed for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site.

Paragraph (h) is revised to provide additional methods of payment for fees assessed under 10 CFR Part 170 and to clarify that payment should be made in U.S. funds.

Section 170.20 Average Cost per Professional Staff-Hour

This section is amended to establish two professional staff-hour rates based on FY 1998 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 1998 for all activities whose fees are based on full cost under § 170.21 is $124 per hour, or $219,901 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 is $121 per hour, or $214,185 per direct FTE. The rates are based on the FY 1998 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 1998 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Direct Program Salaries & Benefits	$103.9	$20.5
Overhead Salaries & Benefits, Program Travel and Other Support	55.3	14.8
Allocated Agency Management and Support	101.7	22.0
Subtotal	260.9	57.3
Less offsetting receipts	.....	.....
Total Budget Included in Hourly Rate	260.9	57.3
Program Direct FTEs	1,186.4	267.3
Rate per Direct FTE	219,901	214,185
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	124	121

Dividing the $260.9 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,186.4) results in a rate for the reactor program of $219,901 per FTE for FY 1998. Dividing the $57.3 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (267.3) results in a rate of $214,185 per FTE for FY 1998. The direct FTE hourly rate for the reactor program is $124 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($219,901) by the number of productive hours in one year (1,776 hours) as indicated in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' The direct FTE hourly rate for the materials program is $121 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($214,185) by the number of productive hours in one year (1,776 hours).

The FY 1998 hourly rates are slightly lower than the FY 1997 rates. The decrease in the hourly rates is primarily due to a change in application of the types of costs included in the hourly rates. Previously, the hourly rates were determined based on the premise that surcharge costs should be shared by those paying Part 170 fees for services as well as those paying Part 171 annual fees. The FY 1998 hourly rates have been determined based on the principle that the surcharge costs are more appropriately included only in the Part 171 annual fee.

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 revising the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1998 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 1998 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, are adjusted for FY 1998 to reflect the revised hourly rate.

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, are modified to recover the FY 1998 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 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) are adjusted to reflect the decrease in the professional hourly rate from $125 per hour in FY 1997 to $121 per hour in FY 1998.

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

The licensing ''flat'' fees are applicable to fee categories 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 will be subject to the fees in this final rule.

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 $121, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to delete specific fiscal year references.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised as described below.

Paragraphs (b), (c) (1), (c)(2), (e) and (f) are revised to comply with the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget for FY 1998.

Paragraph (b) is revised in its entirety to establish the FY 1998 annual fee for operating power reactors and to change fiscal year references from FY 1997 to FY 1998. The fees are established by decreasing the FY 1997 annual fees (prior to rounding) by 0.1 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 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.

The FY 1998 annual fee for each operating power reactor is $2,976,000.

Paragraph (e) is revised to show the amount of the FY 1998 annual fee for nonpower (test and research) reactors. The 1998 annual fee of $57,300 is the same as the FY 1997 annual fee. 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) is revised to delete specific 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. 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 by completing and signing NRC Form 526 that it is a small entity. 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 annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

Section 171.16(d) is revised to establish the FY 1998 annual fees for materials licensees, including Government agencies, licensed by the NRC. The annual fees were determined by decreasing the FY 1997 annual fees (prior to rounding) by about 0.1 percent. After rounding, many of the FY 1998 annual fees for materials licensees are the same as the FY 1997 annual fees.

The amount or range of the FY 1998 annual fees for materials licenses is summarized as follows.

MATERIALS LICENSES ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	$2,604,000
Part 70—Low enriched fuel facility.	1,278,000
Part 40—UF_6 conversion facility.	648,000
Part 40—Uranium recovery facilities.	22,300 to 61,700
Part 30—Byproduct Material Licenses.	490 to $23,500 [1]
Part 71—Transportation of Radioactive Material.	1,000 to $78,800

MATERIALS LICENSES ANNUAL FEE RANGES—Continued

Category of license	Annual fees
Part 72—Independent Storage of Spent Nuclear Fuel.	283,000

[1] Excludes the annual fee for a few military ''master'' materials licenses of broad-scope issued to Government agencies, which is $421,000.

Footnote 1 of 10 CFR 171.16(d) is 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, 1997, and permanently ceased licensed activities entirely by September 30, 1997. All other licensees and approval holders who held a license or approval on October 1, 1997, are subject to the FY 1998 annual fees.

Holders of new licenses issued during FY 1998 are subject to 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 fiscal year 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, 1998, will not be assessed an annual fee for FY 1998. 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 are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

Section 171.19 Payment

Paragraph (a) is revised to provide additional methods of payment and to clarify that payments must be made in U.S. funds.

Paragraph (b) is revised to give credit for partial payments made by certain licensees in FY 1998 toward their FY 1998 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1998 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to

recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraphs (c) and (d) are revised to delete specific fiscal year references.

As in FY 1997, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This 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 will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1998 before the effective date of the FY 1998 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1998 final rule will be billed, at the FY 1998 revised rates, during the anniversary month of their license and payment will be due on the date of the invoice.

During the past seven 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).

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television 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) that required 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 final amount of the FY 1998 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 1998 budget of $472.8 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 and the pilot program pertaining to external regulation of the Department of Energy;

(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 final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1998. The final rule results in a slight decrease in the annual fees charged to some 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 final rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1998.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

X. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

10 CFR Part 170

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

10 CFR Part 171

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 140, 170 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83, Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.205, paragraph (i) is revised to read as follows:

§ 2.205 Civil penalties.

* * * * *

(i) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by a court of the United States, following reference of the matter to the Attorney General for collection, payment of civil penalties imposed under Section 234 of the Act are to be made payable to the U.S. Nuclear Regulatory Commission, in U.S. funds, by check, draft, money order, credit card, or electronic funds transfer such as Automated Clearing House (ACH) using Electronic Data Interchange (EDI). Federal agencies may also make payment by the On-Line Payment and Collections System (OPAC's). All payments are to be made in accordance with the specific payment instructions provided with Notices of Violation that propose civil penalties and Orders Imposing Civil Monetary Penalties.

* * * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

3. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

4. In § 140.7, paragraphs (a) and (c) are revised and paragraph (d) is added to read as follows:

§ 140.7 Fees.

(a)(1) Each reactor licensee shall pay a fee to the Commission based on the following schedule:

(i) For indemnification from $500 million to $400 million inclusive, a fee of $30 per year per thousand kilowatts of thermal capacity authorized in the license;

(ii) For indemnification from $399 million to $300 million inclusive, a fee of $24 per year per thousand kilowatts of thermal capacity authorized in the license;

(iii) For indemnification from $299 million to $200 million inclusive, a fee of $18 per year per thousand kilowatts of thermal capacity authorized in the license;

(iv) For indemnification from $199 million to $100 million inclusive, a fee of $12 per year per thousand kilowatts of thermal capacity authorized in the license; and

(v) For indemnification from $99 million to $1 million inclusive, a fee of $6 per year per thousand kilowatts of thermal capacity authorized in the license.

(2) No fee will be less than $100 per annum for any nuclear reactor. This fee is for the period beginning with the date on which the applicable indemnity agreement is effective. The various levels of indemnity fees are set forth in the schedule in this paragraph. The amount of indemnification for determining indemnity fees will be computed by subtracting from the statutory limit of liability the amount of financial protection required of the licensee. In the case of licensees subject to the provision of § 140.11(a)(4), this total amount will be the amount, as determined by the Commission, of the financial protection available to licensees at the close of the calendar year preceding the one in which the fee becomes due. For those instances in which a certified financial statement is provided as a guarantee of payment of deferred premiums in accordance with § 140.21(e), a fee of $1,000 or the indemnity fee, whichever is greater, is required.

* * * * *

(c) Each person licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant shall pay to the Commission a fee of $5,000 per year for indemnification. This fee is for the period beginning with the date on which the applicable indemnity agreement is effective.

(d) Indemnity fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payments by the On-Line Payment and Collections System (OPAC's). Where specific payment instructions are provided on the invoices, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

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

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

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

6. In Section 170.12, paragraphs (g) and (h) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(g) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector assigned to a specific plant or facility. The fees will be assessed for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site. The hours will be billed at the appropriate hourly rate established in § 170.20.

(2) Fees for all inspections subject to full cost recovery will be assessed on a per inspection basis for costs incurred up to approximately 30 days after issuance of the inspection report. Inspection costs include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) Fees for resident inspectors' time and for specific inspections subject to full cost recovery will be billed on a quarterly basis and are payable upon notification by the Commission.

(h) *Method of payment.* All license fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Payment of invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Applicants and licensees should contact the License Fee and Accounts Receivable Branch at 301–415–7554 to obtain specific written instructions for making electronic payments and credit card payments.

* * * * *

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 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).	$124 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$121 per hour.

8. In § 170.21, the introductory text, Category K in the table, 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	$7,900
Amendment	$7,900
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	$4,800
Amendment	$4,800
3. Application for export of components requiring foreign government assurances only.	
Application—new license	$2,800
Amendment	$2,800
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application—new license	$1,200
Amendment	$1,200
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	$180

[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.

* * * * *

9. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of 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	$560.
Amendment	$380.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
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	$750.
Amendment	$290.
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
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	$120.
Amendment	$280.
C. All other source material licenses:	
Application—New license	$3,600.
Amendment	$560.
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	$3,800.
Amendment	$530.
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	$1,500.
Amendment	$560.
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 § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application—New license	$6,800.
Amendment	$630.
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 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application—New license	$1,900.
Amendment	$420.
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	$380.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,900.
Amendment	$440.
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	$4,500.
Amendment	$740.
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	$2,700.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
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	$4,400.
Amendment	$1,000.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,700.
Amendment	$300.
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	$340.
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	$5,400.
Amendment	$760.
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	$1,800.
Amendment	$620.
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	$2,000.
Amendment	$500.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	$4,300.
Amendment	$680.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$730.
Amendment	$340.
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	$2,500.
Amendment	$520.
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	$2,200.
Amendment	$220.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,400.
Amendment	$820.
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	$6,400.
Amendment	$1,000.
7. Medical licenses:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
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	$3,500.
Amendment	$390.
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	$3,800.
Amendment	$710.
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	$450.
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	$570.
Amendment	$400.
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	$3,600.
Amendment—each device	$590.
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	$2,100.
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	$910.
Amendment—each source	$610.
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	$460.
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	$340.
Amendment	$620.
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.
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 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 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	$7,900.
Amendment	$7,900.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
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	$4,800.
Amendment	$4,800.
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	$2,800.
Amendment	$2,800.
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	$1,200.
Amendment	$1,200.
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	$180.
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.

(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. 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, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

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

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

10. 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).

11. 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 the fiscal year. 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 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.

12. In § 171.15, paragraphs (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

* * * * *

(b) The FY 1998 annual fee for each operating power reactor which must be collected by September 30, 1998, is $2,976,000. This fee has been determined by adjusting the FY 1997 annual fee, (prior to rounding) downward by about 0.1 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 1997 annual fees were also determined by using this method. The FY 1997 annual fees increased 8.4 percent above the FY 1996 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 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.

(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 1998 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	$57,300
Test reactor	$57,300

(f) For each fiscal year, annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

13. In § 171.16, the introductory text and table of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

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

* * * * *

(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 1998 as follows:

	Maximum annual fee per licensed category
Small Businesses 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):	

	Maximum annual fee per licensed category
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 1998, 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 1998 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1998 annual fees, which must be collected by September 30, 1998, have been determined by adjusting downward the FY 1997 exact annual fees (prior to rounding), by about 0.1 percent. As a result of rounding, the FY 1998 annual fee for some fee categories is the same as the FY 1997 annual fee. 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 1997 annual fees were also determined by using this method. The FY 1997 annual fees were increased 8.4 percent above the FY 1996 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	$2,604,000
Nuclear Fuel Services SNM–124	2,604,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,278,000
General Electric Company SNM–1097	1,278,000
Siemens Nuclear Power SNM–1227	1,278,000
Westinghouse Electric Company SNM–1107	1,278,000
(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)	283,000
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) .	3,100
E. Licenses or certificates for the operation of a uranium enrichment facility	2,604,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	648,000
(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]	61,700
Class II facilities [4]	34,900
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) orCategory 2.A.(4)	45,300
(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

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]
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 nonprofit educational institutions whose processing or manufacturing is exempt under § 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 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 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	19,700
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	14,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	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

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]
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	78,800
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	283,000
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 broadscope issued to Government agencies	421,000
18. Department of Energy:	
A. Certificates of Compliance	[10] $1,168,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,964,000

[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 licensees and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. 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] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

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

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

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

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

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

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

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

(e) The activities comprising the 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 licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and 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.

* * * * *

14. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

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

(b) For FY 1998, the Commission will adjust the fourth quarterly invoice 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) 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) 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 date 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 22nd day of May, 1998.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

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

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

I. Background

The Regulatory Flexibility Act 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 on 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, FY 1996, and FY 1997 fee rules and is continuing their use in this FY 1998 final rule. The small entity fee categories in § 171.16(c) of this final 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 1998 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), required 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 about $445.3 million; for FY 1992, about $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; for FY 1997 about $462.3 million; and the amount to be collected for FY 1998 is approximately $454.8 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), in FY 1996 (61 FR 16203; April 12, 1996), and in FY 1997 (62 FR 29194; May 29,1997) 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 1991–1997.

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 establishing the FY 1998 annual fees for all licensees at about 0.1 percent below the FY 1997 exact (prior to rounding) annual fees. Based on this small change, the FY 1998 annual fees (rounded) for many fee categories are the same as the FY 1997 annual fees. Because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC has continued to stabilize annual fees by following the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

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. The NRC's guide is Attachment 1 to Appendix A of this final 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 1998.

II. Impact on Small Entities

The comments received on the proposed FY 1991–1997 fee rule revisions and the small entity certifications received in response to the final FY 1991–1997 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.

Since FY 1991 when annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. 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 following rules: FY 1991 (56 FR 31472; July 10, 1991), FY 1992 (57 FR 32691; July 23, 1992), FY 1993 (58 FR 38666; July 20, 1993), FY 1994 (59 FR 36895; July 20, 1994), FY 1995 (60 FR 32218; June 20, 1995), FY 1996 (61 FR 16203; April 12, 1996), and FY 1997 (62 FR 29194; May 29, 1997). 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 1991–1997 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 will continue for FY 1998, 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 1998, 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 final rule for FY 1998, 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 1998 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 1998, 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 1992–1997, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. 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 that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991–1997 rules remain valid for this final rule for FY 1998. 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 1998

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, meets the thresholds for being considered a ''major'' rule under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1998. 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 1998 annual fees assessed under 10 CFR Part 171. 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 and became effective on May 11, 1995. The small entity size standards are found at 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 at 10 CFR 171.16(c) of the NRC's fee regulations.

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 and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice.

NRC Definition of Small Entity

The NRC, in consultation with the Small Business Administration, has defined a small entity for purposes of compliance with its regulations. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, a small entity is a:

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:

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

	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 invoice, 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. Approximately 800 licensees pay the small entity fee of 1,800 while 600 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 is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

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

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

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

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

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

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

4. A new small entity form (NRC Form 526) 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 NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy '' of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

5. Questions regarding fee invoices may be posed orally or in writing. Please call the license 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.

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

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