

deletion of costs for LLW disposed of by Agreement State licensees. Of the \$7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount (\$5.7 million) is allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR part 171. This results in an additional charge of \$48,000 per facility. Thus, the LLW charge will be \$48,000 per HEU, LEU, UF₆ facility, and each of the other three fuel facilities. The remaining \$1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: \$1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the \$1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is \$21,000.

Certain costs that caused fairness and equity concerns are allocated to materials licensees based on the percent of the budget that each class comprises. This allocation approach was explained in the previous explanation of changes to § 171.15 of this section.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision to allow for proration of the annual fee for a downgraded materials license upon request of the licensee. A proration request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded materials license filed beyond that date will not be considered.

Annual fees for materials licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated

activities during the specified period. Annual fees for materials licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Materials licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that fiscal year.

Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials licensees before the final rule is 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 bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid inspection fees for inspections that were performed in FY 1995, whereas this final rule includes such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed

based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

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