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Part III

Nuclear Regulatory Commission

10 CFR Parts 150 et al.
Revision of Fee Schedules; Fee Recovery for FY 2001; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RIN 3150–AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

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), as amended, which requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately $453.3 million.

EFFECTIVE DATE: August 13, 2001.

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

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

For FY 2001, the NRC is required to recover through fees approximately 98 percent of its budget authority, less the amounts appropriated from the Nuclear Waste Fund (NWF) and from the General Fund. The fee recovery amount for FY 2001 is approximately $453.3 million.

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount from 100 percent to 98 percent of the NRC's budget authority in FY 2001. The OBRA–90 amendment further decreases the fee recovery amount by an additional two percent per year beginning in FY 2002 until the fee recovery amount is 90 percent by FY 2005.

In addition to the 2 percent reduction to the fee recovery amount for FY 2001, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. The FY 2001 Energy and Water Development Appropriations Act states that this $3.2 million shall be excluded from license fee revenues. The total amount thus to be recovered for FY 2001 is approximately $453.3 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, the review of applications for renewal of existing licenses, and the review of requests for license amendments. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Responses to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to its licensees and applicants for FY 2001 on March 28, 2001 (66 FR 16982). Although the comment period ended on April 27, 2001, the NRC evaluated the 13 comments which were received by the close of business on May 7, 2001. Many of the comments raised similar issues. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments and NRC's responses are as follows:

A. Legal Issues

1. Information Provided by NRC in Support of Proposed Rule

Comment. One commenter urged the NRC to provide licensees and the public with a more detailed explanation of the specific activities and associated costs that form the basis for the part 171 annual fees, including detailed information on the outstanding major contracts, their purpose, and their costs. The commenter stated that, to enable stakeholders to provide meaningful comment on the proposed rule, the NRC should provide sufficient detail on the costs associated with each component of reactor regulation and other generic costs. The commenter indicated that this more detailed information would allow licensees and the public to provide more effective feedback and comment on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility.

Response. The NRC believes that commenters were provided ample information on which to base constructive comments on NRC's proposed revisions to parts 170 and 171. Consistent with the requirements of OBRA–90, the proposed fees were developed to recover approximately 98 percent of the NRC's FY 2001 budget

authority from the various classes of licensees. In addition to the descriptions of the types of activities included in the proposed fees and explanations of how the fees were calculated to recover the budgeted costs for those activities, the proposed rule also announced that the work papers supporting the proposed rule were available for public examination. As the proposed rule stated, the work papers were available in the NRC's Agencywide Documents Access and Management System (ADAMS) for public examination (Accession No. ML010860287). During the 30-day comment period the work papers were also available in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD for the public's use. The work papers include extensive information detailing the activities and the associated budgeted resources allocated to the various classes of licensees. The work papers show, by strategic arena, the allocation of budgeted costs for each planned accomplishment within each program of each strategic arena. In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG–1100, Volume 16, "Budget Estimates and Performance Plan, Fiscal Year 2001 (February 2000)," which discusses the NRC's budget for FY 2001, including the activities to be performed in each strategic arena. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule.

The NRC's budgets and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 98 percent of the NRC's FY 2001 budget authority, less the amounts appropriated from the NWF and the General Fund, as required by OBRA–90, as amended. Therefore the commenter's suggestion that more detailed information would allow the public to provide more effective comments concerning the efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule.

B. Specific Part 170 Issues

1. Hourly Rates

Comment. Some commenters opposed the $144 proposed hourly rate for the materials program. As in similar comments received from the uranium recovery industry on the issue in previous fee schedule rulemakings, the commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and should be substantially reduced.

Response. The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The professional FTE rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information technology overhead costs, as well as general and administrative costs, such as rent, heat, supplies, and payroll and human resources staffs.

The proposed hourly rate of $144 for the materials program is a very slight increase over the $143 hourly rate for FY 2000. As stated in the proposed rule, the increase is primarily due to the Government-wide pay increase in FY 2001. The revised hourly rates, coupled with the direct contract costs, recover through part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA, and the revised hourly rates plus direct contract costs recover through part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through part 170 fees, as required by OBRA–90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. The professional hourly rate for the reactor program is $150, and the professional hourly rate for the materials program is $144. For part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

2. Project Manager Billing Issues

Comment. Four comments were received opposing NRC's assessment of Part 170 fees to uranium recovery licensees to recover the costs for Project Managers (PM) assigned to their licenses. Commenters indicated that the PM charges have become an additional expense for the industry. These commenters raised several specific concerns with this fee recovery policy: the PM costs represent administrative charges that may or may not be directly related to the licensee's operations; the PM charges include generic efforts, such as rulemaking activities; licensees have no way to control these costs because the charges are allocated evenly among the licensees to which that PM is assigned; and the problem is exacerbated when a PM is assigned to only one, or in some cases only a few, licensee(s) who must pay all of the overhead costs associated with that PM. Several commenters supported the re-designation of PMs assigned to uranium recovery licenses as points of contact, particularly for those licensees who are not currently operating. One commenter stated that to the extent the NRC is required to recover these costs, it should do so through the annual fee to spread the costs more equitably across a range of licensees. One commenter asserts that the billing policy is an unjustified and *ultra vires* (beyond NRC's legitimate powers) implementation of its OBRA responsibilities, and that it cannot be defended, particularly as a shift of costs from part 171 fees to part 170 fees, because there has not been a decrease in the part 171 fees commensurate with the increase in part 170 fees. Referring to an NRC guidance document for staff hour reporting and coding of activities in NRC's Regulatory Information Tracking System (RITS) (the system used by the NRC to record and track staff hours and from which data is gathered for fee billing purposes), the same commenter charges that there is virtually no activity a PM performs that is excluded from fee recovery. The commenter claims that licensees are billed for generic efforts, despite statements to the contrary in the final FY 1999 fee rule (64 FR 31448; June 10, 1999), giving as an example "rulemaking oversight", which is assigned a code in RITS. The same commenter stated that nothing in the statements of consideration for the FY 1999 final rule, which provided examples of PM activities that would be included in part 170 fees, indicated that licensees would be charged for PM activities for work on the NRC's accounting system or work for another branch/office.

Response. The NRC assesses part 170 fees for PM activities under the authority of the IOAA. In the FY 1999 fee rule, the NRC stated that expanding the scope of part 170 to include, for example, full cost recovery for PMs is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. Because PM activities are services which the NRC provides to specific, identifiable recipients, it is more appropriate that the costs, less costs for

generic activities and leave time, be recovered through part 170 fees assessed to the recipient of that service, rather than through annual fees assessed to the licensees in the class subject to annual fees.

Contrary to the commenter's claim, generic activities conducted by PMs are not recovered through part 170 fees. The fact that rulemaking activities are assigned a code in RITS does not mean that costs for these generic activities are included in PM costs assessed under part 170. RITS is the system used by the NRC's major program offices for recording staff hours, and the data is used for many purposes. Although the NRC's part 170 billing system uses data from RITS, it is programmed to exclude RITS data related to activities that are not subject to part 170 fees. Rulemaking activities are one example of the types of activities that are excluded from part 170 fee billing. Other examples of the types of activities that are coded in RITS but not billed under part 170 are allegation followup activities, escalated enforcement activities, and Combined Federal Campaign activities.

Generic activities are those NRC activities that broadly benefit classes or subclasses of licensees. Examples of generic activities, as stated in the FY 1999 final rule and reiterated in the FY 2000 final rule (64 FR 31451; June 10, 1999, and 65 FR 36947; June 12, 2000, respectively), include rulemaking and development of generic guidance documents. General activities such as training, general correspondence, attending staff meetings, coordination with and support to other offices, and processing documents into the Agencywide Documents Access and Management System (ADAMS) are not generic activities. In responding to uranium recovery industry comments in the FY 2000 final rule, the NRC listed these examples of the types of PM activities that are recovered through PM part 170 fees. The examples provided by the NRC in the FY 1999 and FY 2000 fee rules of PM activities to be billed under part 170 and those excluded from part 170 billing were not intended to be complete lists. Of the 420 RITS codes for use by PMs assigned to uranium recovery and other types of materials licenses, only 125 are identified for Part 170 billing purposes.

The PM activities charged under part 170 are general activities and activities specifically related to the site, such as licensing reviews. As the commenter indicated, the general activities billed under part 170 include time that a PM spends in reporting to the NRC's accounting system. General activities are part of the costs to the agency of providing the PM services, and the NRC continues to believe that the costs are most appropriately recovered from the licensees benefitting from the PM services.

The concept that the assessment of part 170 fees for PM activities increases the costs to the uranium recovery class is incorrect. PM charges might result in an increase for a particular licensee at a particular point in time. However, billing for PM time under part 170 does not cause an increase, or a decrease, in the total fees assessed to the class. Based on the OBRA–90 fee recovery requirements, all budgeted costs allocated to a class that are not recovered through part 170 fees paid by the class are recovered through annual fees assessed to those licensees in the class subject to the annual fees. Thus, all budgeted costs allocated to a class are paid by the class, either through part 170 fees or part 171 fees.

Although on the surface it may appear to be more fair to recover the PM costs through annual fees, the end result would not necessarily be equitable to those licensees paying the annual fees. If, for example, the NRC were to discontinue assessing part 170 fees to uranium recovery licensees for PM activities and all other conditions remained the same, uranium recovery licensees subject to annual fees would pay more in total costs because those uranium recovery licensees in decommissioning are not subject to annual fees and therefore would no longer pay for the PMs assigned to their site. Instead, the licensees authorized to operate or in a standby status would pay those PM costs through annual fees. To illustrate this point, the estimated average total PM part 170 fees paid per year by uranium recovery licensees in decommissioning or possession only status is $322,000. If the NRC eliminated PM activities from Part 170 fees for the uranium recovery class for a full fiscal year, the 11 licensees authorized to operate or in a standby status would be assessed an additional $322,000 in annual fees for that fiscal year in order to recover those costs.

The NRC finds no basis at this time to change its policy of recovering the costs for PMs through part 170 fees, to change the manner in which the costs are spread among those licensees assigned to one PM, or to change the policy with regard to assessing one licensee for all of the PM's activities when the PM is assigned to that one site only. The NRC believes this is a fair and equitable method of recovering these costs.

3. Clarification of Fee Waiver Provisions in § 170.21, Footnote 4 and § 170.31, Footnote 5

Comment. Two comments were received on the NRC's clarification of the fee waivers provided in 10 CFR 170.21, Footnote 4, criterion 3, and 10 CFR 170.31, Footnote 5, criterion (c) for certain documents submitted to the NRC. One commenter expressed concern that the NRC is shifting cost recovery for generic activities from part 171 to part 170. Both commenters contend that the clarification will discourage generic actions and is inconsistent with the Commission's policies aimed at encouraging industry organizations to work cooperatively with the NRC and recognizing the efficiencies and effectiveness to be gained from these efforts. The commenters assert that the clarification represents a change in policy and will discourage industry initiatives, which serve to reduce NRC resource demands and expedite resolution of issues on a generic basis. One commenter further contends that the clarification is inconsistent with the NRC's strategic goal of making its activities and decisions more effective, efficient, and realistic, and recommends that NRC retain "the original interpretation" of the fee waiver.

Response. The NRC's original interpretation of the subject fee waiver provisions has not changed, and has been consistently applied in granting or denying fee waiver requests. However, the NRC has experienced an increase in the number of fee waiver requests that do not meet the criteria. The NRC believes that this increase may be due, at least in part, to the fact that the statements of consideration in the FY 1994 fee rule concerning the waivers (59 FR 36895; July 20, 1994) were not repeated in subsequent fee rulemakings and are not codified in the regulations. Therefore, licensees may be submitting fee exemption requests that do not meet the criteria because they may not be familiar with the intent of the fee waiver provisions.

As the statement of considerations for the 1994 fee rule indicates, the fee waiver provisions of criterion 3 of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 apply to reports submitted for the purpose of supporting NRC's generic regulatory improvements, such as development of generic guidance and regulations and resolution of safety issues applicable to a class of licensees. The NRC has denied fee waiver requests for reports/requests that were not submitted for the *purpose* of NRC's regulatory improvements, such

as those submitted for the purpose of furthering the industry's generic actions. Although the NRC may realize some benefits from the review and approval of reports/requests that are submitted for purposes other than NRC's generic regulatory improvements, the primary beneficiary of the review and approval of such reports is the organization that submitted the report. Assessing part 170 fees for these special services rendered to identifiable recipients is consistent with the provisions of the IOAA. Contrary to one commenter's view, reports of this type do not represent NRC generic activities. Therefore the NRC is not shifting cost recovery for generic activities out of part 171 to part 170.

To assist licensees in determining in advance whether their submissions meet the criteria for the fee waiver, the NRC is, in this final rule, re-stating the original statement of considerations for the FY 1994 rule related to the fee waivers, and is adding clarifying language to the Footnotes that the reports/requests must be submitted for the purpose of NRC's regulatory improvements for the fee to be waived. This is not a change in policy, is consistent with how the fee waiver provisions have been applied by the NRC, and is not inconsistent with the NRC's strategic goals.

4. Invoice Information

Comment. Several commenters assert that NRC's invoices lack adequate explanations of the work done and the dates the work was performed. These commenters urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, commenters contend that the change would serve the NRC, its licensees, and the public well.

Response. As the NRC has stated in response to similar comments on previous rules, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in RITS, which is the NRC's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From RITS, the fee billing system captures the NRC staff hours for activities billable under part 170 as well as the work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the name of the staff member performing the work, and the date the work was completed, if applicable, are printed on the enclosure to the part 170 invoices. Currently, the work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in RITS. However, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts. Additionally, the inspection report number is provided on inspection fee bills. Further, as the NRC has stated in previous rules, any applicant or licensee who does not understand the charges or needs more information in order to understand the bill may request additional details from the NRC. All available information in support of the bill will be provided. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

For contractor costs billed to uranium recovery licensees under part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Again, any additional information that is available is provided upon a specific request of the applicant or licensee. However, as the NRC has explained in the past, the NRC does not plan to develop additional systems solely to provide additional information on its fee invoices. Office of Management and Budget Circular A–25, which provides guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems do not need to be established solely for the purpose of determining or estimating full cost.

C. Specific Part 171 Issues

1. Fee Exemption for Educational Institutions

Comment. One college holding an NRC materials license commented that the proposed fee rule would represent a major financial burden to the college and they would have to consider terminating their license. The commenter requested that NRC provide a fee exemption for small colleges and universities.

Response. The NRC has not changed the existing fee exemptions for nonprofit educational institutions. The part 170 and part 171 fee exemptions for nonprofit educational institutions were not shown in the proposed rule for public comment because only sections of a regulation that are being considered for change in a proposed rulemaking are published in the **Federal Register** as part of the rulemaking process.

As provided in 10 CFR 170.11(a)(4) and 10 CFR 171.11(a)(1), fees are not required for a license applied for by, or issued to, a nonprofit educational institution. Therefore, most colleges and universities will continue to be exempt from part 170 and part 171 fees. However, the fee exemptions do not apply to those licenses that authorize human use; remunerated services to other persons; distribution of byproduct, source, or special nuclear materials or products containing byproduct, source, or special nuclear material; or activities performed under a Government contract.

2. Small Entity Fees

Comment. One commenter stated that the range of $350,000 to $5,000,000 in gross annual receipts for the two tiers of annual fees for small entities is too large. The commenter indicated that their firm is at the lower end of the range, paying the same annual fee as another entity with four to five times their gross revenue. The commenter suggested that to help reduce the license fee burden on smaller entities, the NRC establish additional tiers between the $350,000 and $5,000,000 range; for example, a tier of $350,000 to $1,500,000 in gross annual receipts with an annual fee of $1,000, and a tier of $1,500,000 to $5,000,000 with an annual fee of $1,500.

Response. The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross receipts. Reductions in fees for small entities must be paid for by other NRC licensees in order to meet the requirements of OBRA–90, as amended, to recover most of the NRC's budget through fees. While establishing more tiers would provide additional fee relief for some small entities, it would result in an increase in the small entity subsidy other licensees pay. The NRC believes that in order to maintain a reasonable balance between the objectives of OBRA–90 and the of 1980 (RFA) requirement that the NRC examine ways to minimize significant impacts its rules may have on a substantial number of small entities, no further reductions to the fees should be made.

The NRC established reduced annual fees for small entities based on the RFA requirement that if an 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. The NRC has performed a regulatory flexibility analysis as part of its fee rulemaking each year since annual fees were first established in FY 1991 under OBRA–90, based on the Commission's conclusion that the annual fees for materials licensees result in substantial fees being assessed to a significant number of small entities.

To minimize the impacts of the annual fees, the NRC has established a maximum annual fee for licensees who qualify as a small entity under NRC's size standards. In 1992, the NRC established a lower tier small entity fee to further reduce the impact of the annual fees for those licensees with relatively low gross annual receipts of less than $250,000 and for small governmental jurisdictions with a relatively low population of less than 20,000 (57 FR 13625; April 17, 1992). In establishing this lower tier, the NRC stated that the additional tier would substantially reduce the impact of the annual fees for those licensees with relatively low gross annual receipts, while at the same time it would not substantially increase the amount of fees that other licensees would be required to pay to subsidize the small entities.

In 1995, the NRC published a final rule amending its size standards (60 FR 18344; April 11, 1995). One aspect of the amendment was to add a size standard of 500 or fewer employees for business concerns that are manufacturing entities. In the final FY 1995 fee rule, the gross-receipts level for the lower-tier small entity fees was increased to the current level of $350,000, and a lower tier of less than 35 employees was established for manufacturing entities.

For FY 2000, approximately 35 percent of the small entities qualifying for reduced annual fees qualified for the lower tier small entity fee. The NRC believes that maintaining a single lower tier annual fee for small entities with relatively low gross annual receipts of less than $350,000, for small governmental jurisdictions with a population of less than 20,000, and for manufacturing entities that have an average of less than 35 employees continues to provide a further reduction to the impact of the annual fees to a significant number of small entities.

Comment. Two comments were received concerning NRC's proposal to discontinue mailing NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171," with each annual fee invoice. One of the commenters indicated that the proposal would result in a burden on the licensees because they would have to obtain the form by other means, and that many of the "mom and pop" operations may not have access to the Internet. This commenter believes that, because only a small percentage of the total number of small entity forms submitted are filed by licensees who do not qualify for small entity status, the proposal would unfairly penalize those who do qualify as a small entity. The commenter stated that because NRC requires the form, the NRC is obligated to supply it by a means that is accessible to all licensees. The commenter suggested that instead of discontinuing mailing the form with the annual fee invoices, the form be modified to make it clear who qualifies and who does not qualify as a small entity.

Both commenters stated that the proposal would result in an additional burden on NRC staff due to increased telephone calls requesting the form and staff efforts to mail or fax the form to those requesting it. One commenter believes that many licensees do not read the proposed and final fee rules, and therefore would not be aware of the revised policy. This would result in more calls to the NRC asking why the form was not enclosed with the invoice.

Response. NRC Form 526 is one sheet, with the five NRC size standards for small entities printed on the front, and the instructions for completing the form printed on the back. Both sides of the form state, in capital letters and in large print, that the form should not be completed if the licensee does not qualify under one of the size standards shown. In addition, the Certification block, which is to be signed by the owner of the small entity or an official empowered to act on behalf of that entity, states "I certify that the above named NRC licensee qualifies as a small entity under the size standards established by the NRC for its licensees in 10 CFR 2.810 (60 FR 18344). The licensee qualifies as a small entity under the specific size standard indicated above." Thus, the NRC believes the form and the accompanying instructions are clear that the form should be completed only by those licensees that qualify as a small entity under NRC's size standards.

However, as indicated in the proposed rule, the NRC continues to receive forms completed by licensees who do not qualify as a small entity. When contacted about improperly filed forms, many of these licensees indicate they thought they had to complete the form because it was enclosed with the annual fee invoice. It is for this reason that the NRC proposed to discontinue including NRC Form 526 with each annual fee invoice.

Licensees who file an improperly completed NRC Form 526 do so under penalty of perjury, and could become the subject of an NRC investigation. This could lead to fines, imprisonment, or both, and the revocation or suspension of the license. The NRC believes that there is merit to trying to minimize the number of improperly filed forms, the resulting risk to the licensees, and the associated drain on NRC resources.

The NRC is adopting the proposed change. However, in order to minimize the impact on NRC licensees and NRC staff resources, implementation of the revised policy of not mailing NRC Form 526 with each annual fee invoice will be phased in. The NRC is evaluating various options to determine the most cost effective means of segregating in the annual fee billing system those licensees who are identified in the accounting system as qualifying small entities for the previous fiscal year. Once this process is in place, the NRC will send NRC Form 526 only with those annual fee invoices issued to licensees who qualified as a small entity for the prior year. When this process is implemented, the NRC will send a notice with the annual fee invoices issued to those licensees who did not qualify as a small entity the previous year to advise them of the change and to provide information on how they can obtain the form if they qualify as a small entity in the current year. Until the revised process is in place, the NRC will continue to mail NRC Form 526 with each annual fee invoice issued to materials licensees.

Licensees who have questions about their status as a small entity or about the process for filing the NRC Form 526 should contact the NRC's license fee staff at 301–415–7554, or e-mail the fee staff at *fees@nrc.gov*.

3. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received 5 comments concerning the annual fees charged to NRC's uranium recovery class of licensees. While most of the commenters acknowledged the reduction in annual fees for the uranium recovery class compared to FY 2000, many stated that the reduction does not make up for an increase in total charges over the last two years and does not go far enough. Some commenters are concerned with what they believe is a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program, and the benefit derived from

that program. Several commenters indicate that sites that are on standby or awaiting approval of reclamation plans should not be subject to annual fees because they require minimal NRC oversight. Some commenters stated that the decision to cease operations, go into standby, or begin decommissioning is rarely at the licensee's discretion, but rather is based on the realities of the uranium market. Several commenters stated that the NRC must find an equitable way of dealing with the decreasing number of licensees in the uranium recovery area, which could result in the remaining few paying for the entire program.

Some commenters referred to the April 10, 2001, Commissioners' Briefing provided by the National Mining Association, where the status of the uranium recovery industry, the impacts of NRC's fees on the industry, and the potential for seeking fee relief were discussed. Several commenters supported an industry-wide effort to seek relief from NRC's fees through a petition for rulemaking or by pursuing legislative relief. Commenters claim that the fees NRC charges uranium recovery licensees threaten the viability of the industry, which is vital to the nation's long-term energy security.

Response. The NRC has responded to similar comments concerning the impact of its fees on the uranium recovery industry in several prior fee rulemakings. Most recently, the NRC responded to these concerns in the FY 2000 final rule (65 FR 36950, 36951; June 12, 2000). As explained there, the NRC recognizes that fees may result in a substantial financial hardship for the uranium recovery industry, particularly in light of the industry's economic status and the potential for a decreasing number of uranium recovery licensees. However, consistent with the OBRA–90 requirement that the annual fees must, to the maximum extent practicable, have a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for the uranium recovery class of licensees reflect the NRC's cost of its regulatory services to the class. The NRC determined the costs to be allocated to each class through an extensive review of each planned accomplishment in the major program areas.

As the NRC has stated since FY 1991 when the 100 percent fee recovery requirement was first implemented, the agency recognizes that assessing fees to recover these costs as required by OBRA–90 may result in adverse economic impacts on some licensees. However, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. It is largely for this reason that the NRC has heretofore not based the annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts it is required by law to consider.

The NRC provides reduced annual fees for licensees who qualify as small entities under NRC's size standards, based on a determination under the provisions of the Regulatory Flexibility Act that annual fees have a significant economic impact on a substantial number of small entities. The reduction in annual fees for qualifying small entity uranium recovery licensees is significant. For example, for FY 2000, an in-situ mill licensee paid a reduced annual fee of $400 based on their small entity status, a reduction of $26,850. Because OBRA–90 requires that the NRC recover most of its budget through fees, costs not recovered from licensees based on their small entity status, or for any other reason, are allocated to other licensees. The subsidy for small entities is recovered through the surcharge, with reactor licensees paying about 80 percent of the total surcharge costs.

A decrease in the number of licensees does not necessarily reduce the need for NRC's generic efforts and other activities recovered through part 171 annual fees. For example, the number of licensees does not affect the NRC's costs to establish a risk-informed, performance-based regulatory framework or to maintain the Emergency Response Center. However, the NRC budget process provides an on-going mechanism for assuring that its programs are carried out in the most efficient and effective manner. In FY 1999, budgeted costs of $5.8 million were allocated to the uranium recovery class, including $0.7 million in surcharge costs. In FY 2001, $4.3 million has been allocated to the uranium recovery class, including $0.4 million in surcharge costs. Thus, the budgeted costs for this class, including the allocated surcharge costs, have been reduced by 25 percent since the last rebaselining in FY 1999. After subtracting the estimated part 170 collections and other adjustments, the costs remaining to be recovered through annual fees assessed to the class for FY 2001 is $1.5 million, compared to $2.1 million for FY 1999, a reduction of approximately 29 percent as reflected in the reduced annual fees to be assessed uranium recovery licensees for FY 2001.

The NRC has no choice but to assess annual fees to NRC licensees to recover the budgeted costs not recovered through part 170 fees and other receipts. However, as stated in the proposed rule, to address fairness and equity concerns raised by the NRC related to assessing fees to NRC licensees to recover costs for activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to reduce the NRC's fee recovery requirement by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent by FY 2005. This results in a reduction of $9.3 million in the total fees to be assessed to NRC licensees in FY 2001, a reduction which is shared by all licensees, including uranium recovery licensees.

The NRC has previously considered whether licensees in a standby status or awaiting approval of their reclamation plans should be granted a full or partial exemption from annual fees based on their non-operating status. For example, the NRC addressed this issue in response to comments on the FY 1991 rule (56 FR 31461; July 10, 1991), and further elaborated on it in 1995 in response to a petition for rulemaking from the American Mining Congress (now the National Mining Association) (60 FR 20918; April 28, 1995). The Commission currently believes that the existing policy of assessing annual fees based on whether a licensee holds a valid NRC license that authorizes possession and use, whether or not the facility is actively operating or in a standby status, represents the fairest option available under current legislation. This policy is based on the basic premise that the benefit the NRC provides a licensee is the authority to use licensed material. Whether or not to exercise that authority is a business decision of the licensee.

Based on the fee recovery requirements of OBRA–90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would increase the annual fees assessed to the remaining licensees. Providing such fee relief would add to the effects of decreasing numbers of licensees on annual fees, which continues to be of concern to commenters. Licensees in a standby status continue to benefit from NRC's generic guidance and rules applicable to the uranium recovery class of licensees and therefore should continue to pay annual fees.

Although the comments indicate that annual fees are assessed to certain licensees because of a failure on NRC's part to approve their reclamation plans, this is not the case. The NRC waives the annual fee for those licensees who have

relinquished their authority to operate and have permanently ceased operations, as long as the notifications of such actions are filed by the dates provided in the fee regulations. The reclamation plans do not have to be approved by the NRC for the fee waiver to apply.

4. Quarterly Billing Schedule For Class I And Class II Licenses

Comment. Two commenters supported the NRC's proposal to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees, regardless of the annual fee amounts.

Response. The NRC is modifying § 171.19 in this final rule to establish a quarterly annual fee billing schedule for uranium mill licensees (Class I) and solution mining licensees (Class II). Because the annual fees for these licensees have been close to the $100,000 threshold for quarterly billing, slight changes in the annual fees have resulted in frequent changes in their billing schedules. This change will provide these licensees with a consistent, predictable schedule for paying their annual fees.

5. Annual Fees for Power Reactors in Decommissioning

Comment. The NRC received one comment concerning the spent fuel storage/reactor decommissioning annual fee. The commenter stated that the proposed 32 percent annual fee increase for this class of licensees is not equitable and places an undue burden on the licensees in the class. Comparing the proposed increased annual fee for the spent fuel storage/reactor decommissioning class to the proposed decreased annual fee for operating reactors, the commenter contends that the increase is an undue burden because the decommissioning plants do not generate revenue through the sale of electricity and have no guarantee of recovering additional costs by petitioning local public utility commissions.

The commenter said that the additional costs would have to be assumed by existing plant decommissioning funds, which could affect the resources available for performing plant decommissioning in a timely manner. The commenter believes that at a minimum the fees should be only incrementally increased by approximately six percent per year, corresponding with the NRC phased budget reductions. The commenter believes that this suggested approach would be consistent with the intent of OBRA–90, as amended.

Response. The rebaselined annual fees for FY 2001 reflect the budgeted costs for each class of licensees. Although NRC recognizes that there may be adverse economic impacts on those classes of licensees with annual fee increases, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class without increasing the fees elsewhere, and thereby creating adverse economic impacts for another class of licensees.

The increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since the last annual fee rebaselining in FY 1999. For example, compared to FY 1999, there were increases in budgeted costs allocated to the spent fuel storage/reactor decommissioning class for waste safety research, for spent fuel storage licensing and inspection activities, and for rulemaking. Recovering the costs associated with spent fuel storage and reactor decommissioning from operating power reactors, reactors in decommissioning if they have fuel on site, and those Part 72 spent fuel storage licensees who do not hold a part 50 license is consistent with the intent of OBRA–90 that NRC's resources be allocated among licensees or classes of licensees, so that the licensees who require the greatest expenditure of the NRC's resources will pay the greatest annual fee.

Because these costs are budgeted for activities related to the spent fuel storage/reactor decommissioning class, there is no basis to limit the fee increases that are necessary to recover the budgeted costs from the class. However, based on revised part 170 estimated collections for FY 2001, the annual fee in this final rule for each licensee in the spent fuel storage/reactor decommissioning class is $266,000, which is $9,000 less than the proposed annual fee of $275,000.

In addition to reactor licensees in decommissioning, operating reactors and part 72 licensees that do not hold a part 50 license will also be assessed the increased FY 2001 spent fuel storage/reactor decommissioning annual fee. The decrease in total FY 2001 annual fees for operating power reactors is due to reduced budgeted costs for the operating power reactor class compared to FY 1999.

6. Annual Fees for Fuel Facilities

Comment. One fuel facility licensee commented that the proposed fee increase for fuel facilities would result in a financial burden that counteracts the cost control and reduction efforts that are being implemented by licensees in the class in order to effectively compete in world markets. The commenter also indicated that the proposed rule did not provide the basis for the increase in fuel facility budgeted costs and therefore it was difficult to determine if they are fair and equitable. Another fuel facility licensee referenced its March 13, 2001, request for a downgrade of its license and a reduction in the annual fee, and its March 29, 2001, request for a license amendment to reflect certain discontinued operations for purposes of downgrading the license. The commenter stated that as a result of their request, the fee rule should reflect the downgrade of the license from Category 1.A.(1)(b) to Category 1.A.(2)(a) and the FY 2001 annual fee should be prorated accordingly.

Response. The rebaselined annual fees for FY 2001 have been established based on the budgeted costs allocated to each class of licensees, less the estimated Part 170 collections and other adjustments for each class. The FY 2001 annual fees decreased for many categories of licensees compared to FY 2000, and increased for others. The NRC recognizes that the FY 2001 annual fees may have an adverse impact on those classes of licensees with annual fee increases. However, the rebaselined fees represent a fair and equitable allocation of NRC's FY 2001 budgeted costs to the various classes of licensees. The work papers supporting the proposed rule and this final rule show in detail the allocation of the budgeted costs for each planned accomplishment within the NRC's major programs to the various classes of licensees, and how the fees are calculated. As the NRC stated in the proposed rule (66 FR 16982, March 28, 2001), the work papers for the proposed rule are available in ADAMS, and during the 30-day comment period they were also available in the PDR for review. As shown in the ADDRESSES section, the work papers for this final rule are also available in ADAMS, and will be available in the PDR for review for a period of 90 days from the date this final rule is published in the Federal Register.

Cost control measures that a class of licensees might take do not affect the amount of the budget that the NRC is required to recover from that class through annual fees. Similarly, as the NRC has indicated in several previous fee rulemakings, the NRC does not set fees based on factors such as size, ability to pay, or other economic factors. In order to meet the requirements of OBRA–90, the NRC is unable to reduce

the fees assessed to one class of licensees without increasing the fees assessed to other classes. Therefore, as stated previously, the NRC has only given consideration to the effects it is required to consider by law. As reflected in the Regulatory Flexibility Analysis, Appendix A to this final rule, the NRC has determined that a maximum annual fee for small entities strikes a balance between the fee recovery requirements of OBRA–90, as amended, and the requirement of the Regulatory Flexibility Act to consider means to reduce the impact of the fees on small entities.

In FY 1995, after notice and comment rulemaking, the NRC established the current methodology for determining annual fees for fuel facilities. This methodology results in the reasonable grouping of fuel facility licenses into fee categories according to the licensed operations and the level, scope, depth of coverage, and rigor of generic regulatory programmatic efforts. The programmatic efforts reflect the safety and safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). A matrix depicts the categorization of the fuel facility licenses based on these factors.

The NRC has modified the matrix based on the notification referenced by one commenter that, prior to March 31, 2001, it had permanently ceased certain licensed operations. The revised matrix reflects the licensee's cessation of conversion of uranium hexafluoride (UF_6) to uranium oxide (UO_2) and removal of the remaining UF_6 from the facility prior to March 31, 2001. The NRC has determined, however, that the reduced activities do not diminish the licensee's total safety and safeguards effort factors and the commensurate generic regulatory program to the extent that it will place the license in the next lower fee category. The NRC will respond separately to the specific issues raised in the commenter's March 13, 2001, letter requesting that the license be placed in a lower fee category.

The revised matrix results in a redistribution of the safety and safeguards costs among the fuel fabrication categories. Accordingly, the annual fees for licensees in the fuel facility categories in this final rule have changed from the amounts shown in the proposed rule. The final annual fees for the various fuel facility categories also reflect an increase in estimated Part 170 collections for the fuel facility class for FY 2001 compared to the proposed rule. The final annual fees for the various fuel facility categories are shown in § 171.31.

D. Other Issues

1. NRC's Budget

Comment. One commenter offered several suggestions for reducing NRC's budget and for more efficient use of NRC resources. The commenter indicates that the proposed rule does not account for a reduced number of regional initiative inspections. The commenter suggested that further improvements in inspection and assessment efficiency could be realized by NRC's participation and oversight of licensee self-assessments, rather than NRC conducting independent inspections. The commenter also suggested that the NRC review the scope and content of inspection procedures to make them further risk-informed, that the NRC eliminate resources oriented to minimally safety-significant areas, and that the NRC consider consolidating the regional offices in the near-term and eliminating them in the longer term.

Response. As stated in the response to the comment concerning information the NRC provided in support of the proposed and in response to similar comments on previous fee rules, the NRC's budgets and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenter's suggestions concerning NRC's budget and the use of NRC resources. The NRC's budgets are submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources necessary for NRC to carry out its statutory obligations. In compliance with OBRA–90, the fees are established to recover the required percentage of the approved budget.

However, it should be noted that the NRC's budget reflects its efforts to be effective and efficient. Since FY 1993, the NRC budget has been reduced by more than $25 million in current year dollars and by more than $140 million or 25 percent in constant dollars. Over this same timeframe the staffing of the NRC has been reduced by approximately 600 FTE or 18 percent. To achieve these reductions, the NRC has eliminated programs, improved processes, reduced overhead requirements, and implemented efficiencies and cost savings. The Commission continues to search vigorously for additional opportunities to streamline its operations and to achieve efficiencies.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2001 is $487.3 million, of which $21.6 million has been appropriated from the NWF. In addition, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. In the proposed rule, the total budget was shown as $487.4 million. However, a rescission reduced the total budget authority by approximately $75.0 thousand. This rescission did not affect the fee recovery portion of the budget and, therefore, the fee recovery amounts have not changed from the proposed rule. Based on the 98 percent fee recovery requirement, the NRC must collect approximately $453.3 million in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2001 is $6.3 million more than the amount estimated for recovery in FY 2000. However, the FY 2001 fee recovery amount is further reduced by a $3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published. This leaves approximately $450.2 million to be recovered in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $118.2 million will be recovered in FY 2001 from Part 170 fees and other offsetting receipts. The NRC also estimates a net adjustment for FY 2001 of approximately $0.4 million for payments received in FY 2001 for FY 2000 invoices. The remaining $332.0 million is to be recovered through the part 171 annual fees, compared to $341.0 million for FY 2000.

Table I summarizes the budget and fee recovery amounts for FY 2001.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2001

[Dollars in millions]

Total Budget Authority	$487.3
Less NWF	−21.6
Less General Fund	−3.2
Balance	$462.5

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2001—Continued

[Dollars in millions]

Fee Recovery Rate for FY 2001	×98.0%
Total Amount to be Recovered For FY 2001	$453.3
Less Carryover from FY 2000	−3.1
Amount to be Recovered Through Fees and Other Receipts	$450.2
Less Estimated Part 170 Fees and Other Receipts	−118.2
Part 171 Fee Collections Required	$332.0
Part 171 Billing Adjustments.	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	−3.6
Subtotal	−0.4
Adjusted Part 171 Collections Required	$331.6

The final FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2001 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 to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. For these licensees, payment will be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule will be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule will be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2001 final rule or future final rules to licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov.*

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 Under the Atomic Energy Act of 1954, As Amended

The NRC is revising the hourly rates used to calculate fees and is adjusting the 10 CFR part 170 fees based on the revised hourly rates and the results of the NRC's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101–578, Nov. 15, 1990, 104 Stat. 2838) (CFO Act). Additionally, the NRC is eliminating the fees currently assessed to Agreement State licensees who file revisions to the information submitted on their initial filing of NRC Form 241, "Report of Proposed Activities in Non-Agreement States," and including the costs for these revisions in the application fees assessed for the initial Form 241. The NRC is also establishing an annual registration fee of $450 to be assessed for part 31 general licensees required to register certain types of generally licensed devices. These final revisions are further discussed below.

The final amendments are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2001 direct program full time equivalents (FTEs) and the FY 2001 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is $150 per hour ($266,997 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is $144 per hour ($255,563 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2000 final fee rule, the reactor and materials program rates were $144 and $143, respectively. The increases are primarily due to the Government-wide pay increase in FY 2001.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the nuclear material and waste program.

b. 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 rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 2001 BUDGET AUTHORITY INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits	$107.8M	$31.3M
Overhead Salaries & Benefits, Program Travel and Other Support	56.1M	15.0M
Allocated Agency Management and Support	100.8M	28.5M
Subtotal	$264.7M	$74.8M
Less offsetting receipts	−0.1M	
Total Budget Included in Hourly Rate	$264.6M	$74.8M
Program Direct FTEs	991.0	292.7

TABLE II.—FY 2001 BUDGET AUTHORITY INCLUDED IN HOURLY RATES—Continued

	Reactor program	Materials program
Rate per Direct FTE	$266,997	$255,563
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$150	$144

As shown in Table II, dividing the $264.6 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (991.0) results in a rate for the reactor program of $266,997 per FTE for FY 2001. The Direct FTE Hourly Rate for the reactor program is $150 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($266,997) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Similarly, dividing the $74.8 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (292.7) results in a rate of $255,563 per FTE for FY 2001. The Direct FTE Hourly Rate for the materials program is $144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($255,563) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete materials licensing actions should be increased in some categories and decreased in others, as described below, to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 1999 (64 FR 31448; June 10, 1999). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1999.

In summary, the final licensing fees reflect an increase in average time for new license applications for seven of 33 materials fee categories included in the biennial review, a decrease in average time for five fee categories, and the same average time for the remaining 21 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§ 170.21 and 170.31, and decreased for two other fee categories.

The revised licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 2001. The amounts of the materials licensing "flat" fees are rounded as follows: 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, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31. An additional change to Category 16 is discussed in item 3. below. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

3. Fees for Revisions to Initial Reciprocity Applications

The NRC has taken several actions in the past few years to streamline and stabilize fees assessed to materials user licensees subject to "flat" fees. These actions included elimination of the inspection, renewal, and amendment fees from part 170, and inclusion of the costs for these activities in the part 171 annual fees. Materials user licensees affected by these changes have responded favorably to the elimination of multiple types of individual fees.

The NRC is taking a similar streamlining action for certain submittals from Agreement State licensees operating in areas under NRC jurisdiction under the part 150 reciprocity provisions. Currently, a part 170 fee of $1,200 is charged for each initial filing of NRC Form 241, "Report of Proposed Activities in Non-Agreement States," and an additional fee of $200 is charged for each revision to the information submitted on the initial NRC Form 241. Revisions are filed to request approval for work locations, radioactive materials, or work activities different from those submitted on the initial NRC Form 241. In FY 2000, only $23,000 was collected for 115 revisions.

The NRC has eliminated the revision fees and included the costs for processing them in the fee assessed for each initial reciprocity application. For those revisions filed on or after the effective date of this final rule, the reciprocity applicants will no longer be required to submit payments with their revision requests. In addition to the convenience for the reciprocity applicants, this will also eliminate the NRC's administrative burden of processing the revisions for fee collection purposes. This change plus the increase in the hourly rate results in an increase in the application fee, from $1,200 to $1,400. The costs of the reciprocity program will still be recovered from those receiving the benefit of the NRC's reciprocity activities. It is the NRC's belief that the nominal increase to the application fee and any potential inequities that might result because not all reciprocity licensees file revisions during the year are outweighed by the efficiencies to be gained by both the reciprocity applicants and the NRC in streamlining the process.

A conforming revision to 10 CFR 150.20(b)(2) has also been made to reflect this change.

4. Fees for General License Registrations

The NRC has established an application fee of $450 for registrations filed in accordance with 10 CFR 31.5 for certain generally licensed devices. The NRC published a proposed rule in the Federal Register on July 26, 1999 (64 FR 40295), stating its intent to amend current regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The proposed amendments

included adding explicit requirements for a registration process under 10 CFR 31.5 for certain generally licensed devices; establishing a registration fee; modifying reporting, record-keeping, and labeling requirements; and clarifying which provisions of the regulations apply to all general licenses for byproduct material. The NRC stated in the proposed rule that the registration fee would recover the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, processing and reviewing the registrations, and for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, would be exempt from the fee under § 170.11. Costs not recovered from this small segment of the general licensees registering devices would continue to be recovered from annual fees paid by current holders of specific licenses. The NRC also stated in the proposed rule that the requirement for the registration fee would be effective after the initial registration requests are sent for response under § 31.5(c). In this manner, the first round of registrations will be complete before the requirement for the registration fee goes into effect.

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 to explicitly require that certain general licensees register their generally licensed devices with the NRC each year and pay the appropriate registration fee. Therein the NRC stated that the final fee, estimated at approximately $440 to $450, would be established in the FY 2001 fee rulemaking based on that year's budgeted costs for the program, the new FTE rate, and the estimated number of general licensees required to register.

The NRC currently estimates that approximately 4300 general licensees will be required to register their generally licensed devices. The $450 registration fee is based on the estimated number of registrants, current resource estimates, and the FY 2001 FTE rate. The registration fee will be imposed beginning with the first re-registration of devices currently in use. The registration fee will be required for each annual re-registration of the devices and for all new registrations of devices acquired after the registration program is fully implemented.

Because this is a "flat" fee based on average cost, it will be reviewed biennially as required by the CFO Act. The registration fee established in this FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

5. Fee Waivers

To clarify the intent of the fee waiver provision for certain reports filed with the NRC for review and approval, the NRC is modifying the current criterion 3. of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to specifically state that the review and approval of the reports must support NRC's generic regulatory improvements or efforts. In addition, criteria 1., 2., and 3. of Footnote 4 to § 170.21 have been redesignated as criteria (a), (b), and (c).

In the recent past, several requests for part 170 fee exemptions have been filed by licensees and various organizations who submit topical reports or other documents to the NRC for review. Part 170 currently provides that fees will not be assessed for requests or reports submitted to the NRC in response to an NRC inquiry to resolve an identified safety, safeguards, or environmental issue; or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin; or as a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts. Many of the fee exemption requests have been denied because the submittals have not met the intent of the waiver provision. For example, several fee waiver requests were based on the industry's future use of the reports, rather than these reports being submitted, reviewed, and approved for the purpose of NRC's generic regulatory improvements.

In the statement of considerations for the FY 1994 fee rule (59 FR 36895; July 20, 1994), which incorporated this fee waiver provision, the NRC stated that it believed the costs for some requests or reports filed with the NRC are more appropriately captured in the part 171 annual fees rather than assessing specific fees under part 170. The statement of considerations continued to state that these reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations and resolution of safety issues applicable to a class of licensee.

In summary, the NRC is amending 10 CFR part 170 to—

1. Revise the material and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;
3. Eliminate fees for Agreement State licensees who submit revisions to their initial requests for reciprocity in States under NRC jurisdiction, and incorporate these costs into the initial reciprocity application fee;
4. Establish registration fees to be assessed for each registration or re-registration of generally licensed devices under 10 CFR 31.5, beginning with the first re-registration of those generally licensed devices currently in use; and
5. Clarify that the fee waiver provisions of the current criterion 3. of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 apply only to requests/reports submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts, and redesignate criteria 1., 2., and 3., of Footnote 4 to § 170.21 as criteria (a), (b), and (c).

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

The NRC is revising the annual fees for FY 2001. The NRC is also adopting its proposal to discontinue mailing NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR part 171" with each materials license annual fee invoice. The amendments are as follows.

1. Annual Fees

The NRC is amending §§ 171.15 and 171.16 to establish rebaselined annual fees for FY 2001. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995) and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 1999. After carefully considering all factors, including the changes to the amount of the budget allocated to classes of licensees, and weighing the complex issues related to both fairness and

stability of fees, the Commission has determined that it is appropriate to rebaseline the annual fees this year. Rebaselining fees results in reduced annual fees for a majority of the categories of licenses and increased annual fees for other categories.

Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with fee increases, establishing new baseline annual fees this year results in a more precise relationship between annual fees and NRC costs of providing services. It thus constitutes one means to fairly and equitably allocate costs among the NRC's licensees.

The annual fees in §§ 171.15 and 171.16 are revised to recover approximately 98 percent of the NRC's FY 2001 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2001 is $331.6 million, compared to $341.0 million for FY 2000.

The FY 2001 annual fees reflect an increase for some categories of licensees and a decrease for others from the previous year. The decreases in annual fees range from approximately 2.2 percent for operating power reactor licensees (including the spent fuel storage/reactor decommissioning annual fee), to approximately 29.0 percent for uranium recovery licensees. The increases in annual fees range from approximately 2.6 percent for materials licenses authorizing distribution of radiopharmaceuticals, to approximately 165.2 percent for transportation quality assurance program approvals authorizing use only.

The annual fees in this final rule for operating power reactors, spent fuel storage/reactor decommissioning, and fuel facilities are less than the proposed annual fees based on the final estimated part 170 collections for FY 2001. In addition, the final annual fees for fuel facilities reflect a redistribution of budgeted costs among the fuel facility categories. This redistribution is explained in detail in Section III., Final Action.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs affecting the classes of licensees, the reduction in the fee recovery rate from 100 percent for FY 2000 to 98 percent for FY 2001, the estimated part 170 collections for the various classes of licensees, a $3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published, the increased hourly rates, decreases in the numbers of licensees for certain categories of licenses, and, for the materials user class, the results of the biennial review of Part 170 fees required by the CFO Act. The biennial review shows that the average number of professional hours to conduct inspections and to review new license applications for materials licenses increased for some fee categories, decreased for others, or remained the same. The average time to conduct inspections and to review new license applications for the materials user license fee categories serve as accurate measures of the complexity of the licenses and, therefore, are used to allocate the materials budget for rebaselining the annual fees. Increases in the average professional time for inspections and reviews of new license applications result in higher annual fees for the affected fee categories, assuming all else remains the same (e.g., no loss of licensees).

The increase in annual fees (from $2,300 to $6,100) for transportation quality assurance approvals authorizing use only, which have the largest percentage increase, is due in part to the allocation of budgeted costs for the enhanced participatory part 71 rulemaking, headquarters and regional allegation and enforcement follow-up activities, and the Office of Nuclear Material Safety and Safeguards' risk study activities. In addition, there has been a decrease in the amount of budgeted costs allocated for part 71 vendor inspections while the allocation of budgeted costs for quality assurance reviews remained about the same. The ratio of the budgeted costs for these activities is currently used to allocate the total annual fee amount for the transportation class, less the amount allocated to DOE for its certificates of compliance, between the quality assurance approvals authorizing use only and those that authorize use and fabrication/design. As a result of the decrease in budgeted costs for part 71 vendor inspections, a larger percentage of the total annual fee amount for the transportation class has been allocated to quality assurance approvals authorizing use only than in the past.

Table III below shows the rebaselined annual fees for FY 2001 for representative categories of licensees.

TABLE III.—REBASELINED ANNUAL FEES FOR FY 2001

Class of licensees	FY 2001 annual fee
Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$2,753,000.
Spent Fuel Storage/Reactor Decommissioning	266,000
Nonpower Reactors	74,000
High Enriched Uranium Fuel Facility	3,545,000
Low Enriched Uranium Fuel Facility	1,146,000
UF_6 Conversion Facility	509,000
Uranium Mills	94,300
Transportation:	
Users/Fabricators	62,500
Users Only	6,100
Typical Materials Users:	
Radiographers	12,500
Well Loggers	8,800
Gauge Users	2,400
Broad Scope Medical	24,200

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the amendment to OBRA–90 that reduced the NRC's fee recovery requirement by 2 percent for FY 2001, from 100 percent to 98 percent of the NRC's budget authority, the total surcharge costs to be recovered through annual fees has been reduced by about $9.3 million. The total FY 2001 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table IV. All dollar amounts in the Table are rounded.

TABLE IV.—SURCHARGE COSTS

[Dollars in Millions]

Category of costs	FY 2001 Budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$6.0
b. Agreement State oversight	7.1
c. Low-level waste disposal generic activities	1.7

TABLE IV.—SURCHARGE COSTS—Continued

[Dollars in Millions]

Category of costs	FY 2001 Budgeted costs
d. Site decommissioning management plan activities not recovered under Part 170	7.3
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	8.1
b. Licensing and inspection activities associated with other Federal Agencies	3.9
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.6
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	14.4
b. Generic decommissioning/reclamation (except those related to power reactors)	3.4
Total surcharge costs	57.6
Less 2 percent of NRC's FY 2001 total budget (minus NWF and General Fund amounts)	−9.3
Total Surcharge Costs to be Recovered	$48.3

As shown in Table IV, the total surcharge cost allocated to the various classes of licensees for FY 2001 is $48.3 million. The NRC has continued to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licensees. The surcharge costs allocated to each class are included in the annual fee assessed to each licensee. The FY 2001 surcharge costs allocated to each class of licensees are shown in Table V.

TABLE V—ALLOCATION OF SURCHARGE

[All dollar amounts are in millions and are rounded]

	LLW surcharge		Non-LLW surcharge		Total surcharge amount
	Percent	Amount	Percent	Amount	
Operating Power Reactors	74	$1.3	79.1	$36.9	$38.2
Spent Fuel Storage/Reactor Decomm			9.2	4.3	4.3
Nonpower Reactors			0.1	0.0	0.0
Fuel Facilities	8	0.1	5.3	2.5	2.6
Materials Users	18	0.3	3.9	1.8	2.1
Transportation			1.2	0.5	0.5
Rare Earth Facilities			0.2	0.1	0.1
Uranium Recovery			1.0	0.4	0.4
Total Surcharge		1.7		46.6	48.3

The budgeted costs allocated to each class of licensees and the calculations of the rebaselined fees are described in A through H below. The work papers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licensee and how the fees are calculated. The work papers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address *http://www.gov/NRC/ADAMS/index.html*. For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

Because the FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2001 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 2001 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the FY 2001 final rule will be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2000 rate in FY 2001. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2001 final rule will be billed for the annual fee at the FY 2001 rate during the anniversary month of the license, and payment will be due on the date of the invoice.

a. *Fuel Facilities.* The FY 2001 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licensees is approximately $17.4 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999), as modified for FY 2001 to reflect a change in programmatic efforts related to the low enriched uranium fuel facility category. In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from

a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

The matrix has been revised for this final rule based on a notification received in March 2001 from Westinghouse Electric Company, LLC (formerly CE Nuclear Power LLC), holder of License SNM-33, that it had permanently ceased certain licensed activities prior to March 31, 2001. The revised matrix reflects the licensee's cessation of conversion of uranium hexafluoride (UF_6) to uranium oxide (UO_2) and removal of the remaining UF_6 from the facility prior to March 31, 2001. Although the reduced activities do not diminish the licensee's total safety and safeguards effort factors and the commensurate generic regulatory program to the extent that it will place the license in the next lower fee category, it does result in a redistribution of the safety and safeguards costs among the fuel facility categories.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licensees are summarized in the table below.

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.5%)	76 (55.1%)
Enrichment	2	70 (25.7%)	34 (24.6%)
Low Enriched Uranium Fuel	4	85 (31.3%)	23 (16.7%)
UF_6 Conversion	1	8 (2.9%)	3 (2.2%)
Limited Operations Facility	1	12 (4.4%)	0 (0%)
Others	1	6 (2.2%)	2 (1.4%)

Applying these factors to the safety, safeguards, and surcharge components of the $17.4 million total annual fee amount for the fuel facility class results in the annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2001 annual fee
High Enriched Uranium Fuel	$3,545,000
Uranium Enrichment	2,208,000
Low Enriched Uranium	1,146,000
UF_6 Conversion	509,000
Limited Operations Facility	467,000
Others	340,000

b. *Uranium Recovery Facilities.* The FY 2001 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.5 million. Of this amount, $654,000 will be assessed to DOE to recover the costs associated with DOE sites under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining $864,000 will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The costs are allocated to the individual uranium recovery licensees in these categories based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999).

The methodology for establishing part 171 annual fees for uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licensees: conventional uranium mills (Class I facilities), solution mining uranium mills (Class II facilities), and mill tailings disposal facilities (11e(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents, etc.);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively

estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of uranium recovery licensees are as follows.

TABLE VIII.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Level of benefit			
	Number of facilities	Category weight	Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2310	33
Class II (in-situ mills)	[1]6.5	645	4193	59
11e(2) disposal	1	475	475	7
11e(2) disposal incident to existing tailings sites	1	75	75	1

[1]The FY 2001 annual fee will be prorated 50 percent for Cogema Mining's License SUA-1341 based on its November 10, 2000, request that the license be amended for possession only.

Applying these factors to the $864,000 in budgeted costs to be recovered results in the following annual fees:

TABLE IX.—ANNUAL FEES FOR URANIUM RECOVERY LICENSES

Facility type	FY 2001 annual fee
Class I (conventional mills)	$94,300
Class II (in-situ mills)	79,000
11e(2) disposal	58,200
11e(2) disposal incidental to existing tailings sites	9,200

The FY 2001 annual fees for Class I and Class II facilities (conventional mills and in-situ mills), are below the $100,000 threshold currently established in § 171.19 for quarterly billing. Therefore, under the current requirements these licensees would be subject to annual fee billing based on the anniversary date of their license for FY 2001. In FY 1999 the reverse situation occurred for these licensees; i.e., in FY 1998 the annual fees were below the $100,000 quarterly billing threshold and the licensees were billed on the license anniversary date, but beginning in FY 1999 the licensees became subject to quarterly billing for the annual fees because the fees were over the $100,000 threshold. Because the annual fees for these licensees have been close to the $100,000 threshold, small changes to the annual fee amounts have resulted in frequent changes to their annual fee billing schedule. To provide stability in the billing schedule, the NRC is revising § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. This will provide these licensees with a consistent, predictable schedule for paying their annual fees. As provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2001 exceed the amount of the revised annual fee, the overpayment will be refunded.

c. *Power Reactors.* The approximately $258.7 million in budgeted costs to be recovered through FY 2001 annual fees assessed to operating power reactors are allocated uniformly to the 104 operating power reactors. This results in a FY 2001 annual fee of $2,487,000 per reactor. Additionally, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee, which for FY 2001 is $266,000. This results in a total FY 2001 combined annual fee of $2,753,000 for each operating power reactor.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2001, budgeted costs of approximately $32.2 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to Part 50 power reactors, except those reactors in decommissioning which do not have spent fuel on site, and to part 72 licensees who do not hold a part 50 license. The costs are divided equally among the 121 licensees, resulting in an FY 2001 annual fee of $266,000 per licensee.

e. *Non-power Reactors.* Approximately $296,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licensees for FY 2001. This amount is divided equally among the four non-power reactors subject to annual fees. This results in an FY 2001 annual fee of $74,000 for each licensee.

f. *Rare Earth Facilities.* The FY 2001 budgeted costs of approximately $89,600 for rare earth facilities to be recovered through annual fees is divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is an FY 2001 annual fee of $29,900 for each rare earth facility.

g. *Materials Users.* To equitably and fairly allocate the $23.1 million in FY 2001 budgeted costs to be recovered in annual fees assessed to the approximately 5000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows.

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs

The constant is the multiple necessary to recover approximately $15.1 million in general costs and is 0.96 for FY 2001. The inspection multiplier is the multiple necessary to recover approximately $5.7 million in inspection costs for FY 2001, and is 1.2 for FY 2001. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 2001, unique costs of approximately $143,000 were identified for the medical development program, an amount attributable to medical licensees.

The annual fee assessed to each licensee also includes a share of the $1.8 million in surcharge costs allocated to the materials user class of licensees and, for certain categories of these licenses, a share of the approximately $300,000 in LLW surcharge costs allocated to the

class. The annual fee for each fee category is shown in § 171.16(d).

h. *Transportation*. Of the approximately $3.9 million in FY 2001 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately $1.1 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $2.8 million, approximately 26 percent is allocated to the 83 quality assurance plans authorizing use only and the 36 quality assurance plans authorizing use and design/fabrication. The remaining 74 percent is allocated only to the 36 quality assurance plans authorizing use and design/fabrication. This results in an FY 2001 annual fee of $6,100 for each of the holders of quality assurance plans that authorize use only, and an FY 2001 annual fee of $62,500 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees and does not believe that a change to the small entity fees is warranted for FY 2001. In FY 2000, the NRC revised the small entity fees for the first time since they were introduced in FY 1991 and FY 1992. The revision in FY 2000 was based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and on changes that had occurred in the fee structure for materials licensees over time (65 FR 36956, 36957). The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other materials licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

In the future the NRC plans to re-examine small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, at a maximum, annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur.

3. Other Amendments

The NRC currently sends an NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171," with each annual fee invoice issued to materials licensees. Although the instructions on the form state that it is to be filed only by those licensees who qualify as a small entity under NRC's size standards, the NRC has received many improperly filed forms. When contacted, many of these licensees have indicated they completed the form because it was enclosed with the annual fee invoice. In an effort to minimize the number of improperly filed forms, the NRC will phase out mailing the form with each annual fee invoice. Instead, licensees will be able to access NRC Form 526 on the NRC's external web site at *http://www.nrc.gov*. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 will be able to complete the form in accordance with the instructions provided and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 can be obtained either through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice, by calling the NRC's fee staff at 301-415-7554, or by e-mailing the fee staff at *fees@nrc.gov*.

In summary, the NRC has—

1. Established new rebaselined annual fees for FY 2001;

2. Revised § 171.16(c)(2) to delete the sentence indicating that NRC will mail NRC Form 526 with each annual fee invoice.

3. Revised § 171.19 to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees; and

4. Determined that the small entity fees will be re-examined every two years, on the same schedule as the biennial review of fees required by the CFO's Act.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 98 percent of its budget authority in FY 2001 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

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 assessment nor an environmental impact statement 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 *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). The Commission's fee guidelines were developed based on these legal decisions.

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). This 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 Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount from 100 percent to 98 percent of the NRC's budget authority for FY 2001. To comply with this statutory requirement, and in accordance with § 171.13, the NRC is publishing the amount of the FY 2001 annual fees for 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, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 98 percent of the Commission's FY 2001 budget of $487.4 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 2001 appropriations language provides that $3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the other Federal agencies and States be excluded from fee recovery.

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). Further, the NRC's FY 1991 annual fee rule methodology was 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, as amended, to recover approximately 98 percent of its FY 2001 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2001. The final rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. 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 is the small entity compliance guide for FY 2001.

IX. Backfit Analysis

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

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170

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

10 CFR Part 171

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 150, 170 and 171.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

1. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68, Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

2. In § 150.20, paragraph (b)(2) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) * * *

(2) Shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

* * * * *

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

3. The authority citation for Part 170 is revised to read as follows:

Authority: sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

4. Section 170.2 is amended by adding paragraph (s) to read as follows:

§ 170.2 Scope.

* * * * *

(s) A holder of a general license granted by 10 CFR Part 31 who is required to register a device(s).

5. Section 170.3 is amended by revising the definitions of *Materials License* and *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued or granted by the NRC under the regulations in 10 CFR Parts 30, 31 through 36, 39, 40, 61, 70, 72, and 76.

* * * * *

Special Projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC—

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

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

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

* * * * *

6. In § 170.12, paragraph (a) is revised to read as follows:

§ 170.12 Payment of Fees.

(a) *Application and registration fees.* Each application or registration for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category before receiving the prescribed application fee. The application or registration fee(s) is charged whether the Commission approves the application or not. The application or registration fee(s) is also charged if the applicant withdraws the application or registration.

* * * * *

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 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities): $150 per hour

Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities): $144 per hour

8. In § 170.21, the introductory text, Category K, and footnotes 1, 2, 3, and 4 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, re-qualification 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 under 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	$9,400
Amendment	$9,400
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application-new license	$5,500
Amendment	$5,500
3. Application for export of components requiring foreign government assurances only:	
Application-new license	$1,700
Amendment	$1,700
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	$220

[1] Fees will not be charged for orders issued by the Commission under § 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 in effect now or in the future, 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 final rule effective June 20, 1984 (and contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1985) and the final rule effective July 2, 1990 (and contained in the 10 CFR, parts 51 to 199, edition revised as of January 1, 1991), 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.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] 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 NRC's generic regulatory improvements or efforts.

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

Category of materials licenses and type of fees [1]	Fees [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: Licensing and Inspection	Full Cost
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI): Licensing and inspection	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	$660
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	$1,300
E. Licenses or certificates for construction and operation of a uranium enrichment facility: Licensing and inspection	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, and 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: Licensing and inspection	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 2A(1): Licensing and inspection	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 2A(1): Licensing and inspection	Full Cost
B. Licenses which authorize the possession, use, and/or installation of source material for shielding: Application	$160
C. All other source material licenses: Application	$5,700
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application	$6,700
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application	$2,200
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D: Application	$8,700
D. Licenses and approvals issued under §§ 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 under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4): Application	$2,400
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): Application	$1,700
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	$3,400
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	$8,000
H. Licenses issued under 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. The category does not include 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	$2,300
I. Licenses issued under 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. This category does not include 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	$3,400
J. Licenses issued under 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. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: Application	$1,000
K. Licenses issued under 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. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: Application	$590
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution: Application	$5,700
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution: Application	$2,500
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: Application	$2,600

SCHEDULE OF MATERIALS FEES—Continued

Category of materials licenses and type of fees [1]	Fees [2 3]
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations: Application	$4,200
P. All other specific byproduct material licenses, except those in Categories 4A through 9D: Application	$1,300
Q. Registration of a device(s) generally licensed under part 31: Registration	$450
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: Licensing and inspection	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	$1,700
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	$2,600
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	$5,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies: Licensing	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	$11,500
7. Medical licenses:	
A. Licenses issued under 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	$6,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under 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	$4,500
C. Other licenses issued under 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	$2,200
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities: Application	$330
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	$5,400
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	$5,400
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution: Application—each source	$1,600
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	$550
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers: Licensing and inspections	Full Cost
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application	$650
Inspections	Full Cost
11. Review of standardized spent fuel facilities: Licensing and inspection	Full Cost
12. Special projects:[5]	
Approvals and preapplication/.	Full Cost
Licensing activities	Full Cost
Inspections	Full Cost
13. A. Spent fuel storage cask Certificate of Compliance: Licensing	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 under parts 30, 40, 70, 72, and 76 of this chapter: Licensing and inspection	Full Cost
15. Import and Export licenses: Licenses issued under 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite:	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries:	
Application—new license	$9,400
Amendment	$9,400

SCHEDULE OF MATERIALS FEES—Continued

Category of materials licenses and type of fees [1]	Fees [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	$5,500
Amendment	$5,500
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	$1,700
Amendment	$1,700
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	$220
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20: Application	$1,400

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and 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 and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(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.

(2) Applications 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.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories 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).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine 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(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 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 in effect now or in the future), 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 multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the final rule effective June 20, 1984 (and contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1985) and the final rule effective July 2, 1990 (and contained in the 10 CFR, parts 51 to 199, edition revised as of January 1, 1991), 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.

[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 for an application that deals only with the sealed sources authorized by the license.

[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 re-analysis 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 the 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 the NRC's generic regulatory improvements or efforts.

10. Section 170.41 is revised to read as follows:

§ 170.41 Failure by applicant or licensee to pay prescribed fees.

If the Commission determines that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee. The Commission may issue an order with respect to licensed activities that the Commission determines to be appropriate or necessary to carry out the provisions of this part, parts 30, 31, 32 through 35, 40, 50, 61, 70, 71, 72, 73, and 76 of this chapter, and of the act.

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

11. The authority citation for Part 171 is revised 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. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

12. In § 171.5, the definition of *Materials License* is revised to read as follows:

§ 171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued or granted by the NRC under the regulations in 10 CFR parts 30, 31 through 36, 39, 40, 61, 70, 71, 72, and 76.

* * * * *

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

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2001 annual fee for each operating power reactor which must be collected by September 30, 2001, is $2,753,000.

(2) The FY 2001 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2001 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 base annual fee for operating power reactors are as follows:

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

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2001 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $266,000.

(2) The FY 2001 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 spent fuel storage/reactor decommissioning rebaselined annual fee are—

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2001 surcharge are as follows:

(i) Low level waste disposal generic activities;

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

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act).

(2) The total FY 2001 surcharge allocated to the operating power reactor class of licensees is $38.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2001 operating power reactor surcharge to be assessed to each operating power reactor is approximately $367,000. This amount is calculated by dividing the total operating power reactor surcharge ($38.2 million) by the number of operating power reactors (104).

(3) The FY 2001 surcharge allocated to the spent fuel storage/reactor decommissioning class of licensees is $4.3 million. The FY 2001 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $35,600. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2001 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor: $74,000
Test reactor: $74,000

14. In § 171.16, paragraphs (c), (d) and (e) are revised to read as follows:

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

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides

the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in this paragraph. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

	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	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

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

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at *http://www.nrc.gov*. Licensees who cannot access the NRC's external web site may obtain NRC Form 526 through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing, by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at <fees@nrc.gov>.

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

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2001 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in this paragraph. The FY 2001 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2001 surcharge are shown for convenience in paragraph (e) of this section.

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

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	$3,545,000
Nuclear Fuel Services SNM-124	3,545,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Westinghouse Electric Company LLC SNM-33	1,146,000
Global Nuclear Fuel—Americas, LLC SNM-1097	1,146,000
Framatome ANP Richland, Inc. SNM-1227	1,146,000
Westinghouse Electric—Columbia SNM-1107	1,146,000
(2) All other special nuclear materials licenses not included in Category 1A(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations: Framatome Cogema SNM-1168	467,000
(b) All Others: General Electric SNM-960	340,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	N/A[11]
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	1,400
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(2)	3,300
E. Licenses or certificates for the operation of a uranium enrichment facility	2,208,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	509,000
(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]	94,300
Class II facilities[4]	79,000
Other facilities[4]	29,900

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

Category of materials licenses	Annual fees [1 2 3]
(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 2A(2) or Category 2A(4)	58,200
(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 2A(2)	9,200
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	690
C. All other source material licenses	11,000
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	20,500
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,300
C. Licenses issued under §§ 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 under 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 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	12,300
D. Licenses and approvals issued under §§ 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 under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	3,900
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	5,800
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	20,900
H. Licenses issued under 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	3,200
I. Licenses issued under 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	4,600
J. Licenses issued under 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	2,100
K. Licenses issued under 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	1,400
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	10,000
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	4,400
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	$4,800
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,500
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,400
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
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] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	9,800

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

Category of materials licenses	Annual fees [1 2 3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,400
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	8,800
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries: A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	16,900
7. Medical licenses:	
A. Licenses issued under 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	13,900
B. Licenses of broad scope issued to medical institutions or two or more physicians under 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]	24,200
C. Other licenses issued under 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]	4,600
8. Civil defense: A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,100
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	5,800
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	5,800
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	1,700
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	590
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. Quality assurance program approvals issued under 10 CFR part 71.	
Users and Fabricators	62,500
Users	6,100
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	306,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,107,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	654,000

[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 current 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, 2000, and permanently ceased licensed activities entirely by September 30, 2000. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license 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 1A(1) are not subject to the annual fees for Category 1C and 1D 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, 72, or 76 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] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, 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 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.

[11] See 10 CFR 171.15(c).

[12] See 10 CFR 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR part 170 fees.

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

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licensees (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and 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 of nonprofit educational institutions and reviews for 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).

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

§ 171.19 Payment.

* * * * *

(b) Annual fees in the amount of $100,000 or more and described in the Federal Register document issued under § 171.13, and annual fees for Class I and Class II uranium recovery licensees 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. The NRC will adjust the fourth quarterly invoice 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. Licensees whose annual fee for the previous fiscal year was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for the current fiscal year is $100,000 or greater (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the revised annual fee for the current fiscal year, less any payments received for the current fiscal year based on the anniversary date billing process.

* * * * *

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000, except those for Class I and Class II uranium recovery licensees, 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 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

* * * * *

Dated at Rockville, Maryland, this 31st day of May, 2001.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix will not appear in the code of **Federal Register.**

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 (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount for FY 2001 to 98 percent of the NRC's budget. Certain NRC costs related to reviews and assistance provided to other Federal agencies and States were excluded from the fee recovery requirement for FY 2001 by the Energy and Water Development Appropriations Act. The amount to be recovered for FY 2001 is approximately $453.3 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there were a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished.

After carefully considering all factors, including the changes to the amount of the budget allocated to classes of licensees, and weighing the complex issues related to both fairness and stability of fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees in FY 2001. This rebaselining results in reduced annual fees for a majority of the categories of

licenses, and increased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2001 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous proposed fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees for FY 2000) have requested small entity certification in the past.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("mom and pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee 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. Other licensees, especially well-loggers, noted that the increased fees would force 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.

3. 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.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others 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 annual fees for materials licenses were first established in 1991, 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.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA as it developed each of its fee rules since 1991.

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

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

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

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

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. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States—Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000 and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result of the re-analysis, the maximum small entity annual fee was increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-

examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2001. The revision to the small entity fees in FY 2000 was the first change to the fees since they were introduced in FY 1991 and FY 1992. The revised fees were based on on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time. The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

The NRC has declined to adopt the suggestion of one commenter on the FY 2001 proposed fee rule that the NRC establish additional tiers of annual fees for small entities to further reduce the license fee burden on smaller entities. Reductions in the fees for small entities must be paid by other NRC licensees in order to meet the requirements of OBRA–90, as amended, that NRC must recover most of its budget through fees. While establishing more tiers would provide additional fee relief for some small entities, it would result in an increase in the small entity subsidy other licensees pay. For FY 2000, approximately 35 percent of the small entities qualifying for reduced annual fees qualified for the lower tier small entity fee. The NRC believes that maintaining a single lower tier annual fee for small entities with relatively low gross annual receipts of less than $350,000, for small governmental jurisdictions with a population of less than 20,000, and for manufacturing entities that have an average of less than 35 employees continues to provide a further reduction of the impact of the annual fees to a significant number of small entities.

In the future the NRC plans to re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, at a maximum, annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur. Therefore, the NRC plans to re-examine the small entity fees in FY 2003.

IV. 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 recover 98 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 analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 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 2000 fee rule remain valid for FY 2001.

Attachment 1 to Appendix A—Nuclear Regulatory Commission Small, Entity Compliance Guide, Fiscal Year 2001

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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), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this compliance guide has been prepared to assist NRC material licensees in complying with the FY 2001 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2001 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171" to qualify for the reduced annual fee. Effective with the final FY 2001 fee rule, the NRC will phase out sending NRC Form 526 with each materials license annual fee invoice. This form can be accessed on the NRC's external web site at *http://www.nrc.gov*. The form can then be accessed by selecting "Planning & Financial Management" and then selecting "NRC License Fee Program" and under "Forms" selecting NRC Form 526. Licensees who cannot access the NRC's external web site may obtain NRC Form 526 through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, 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. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

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]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration regulations.

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of

[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.

employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Effective with the final FY 2001 fee rule, the NRC is phasing out mailing NRC Form 526 with each annual fee invoice issued to materials licensees. Instead, licensees can access this form on the NRC's external web site at *http://www.nrc.gov*. The form can then be accessed by selecting "Planning & Financial Management" and then selecting "NRC License Fee Program" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR 2.810 would be able to complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. Licensees who cannot access the NRC's external web site may obtain NRC Form 526 through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity 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 must be entered if 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 for which the licensee qualifies as a small entity. Check only one box. Note the following:

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

(2) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means 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 entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(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.

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 $2,300 or $500 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 $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that 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 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. *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.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under 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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